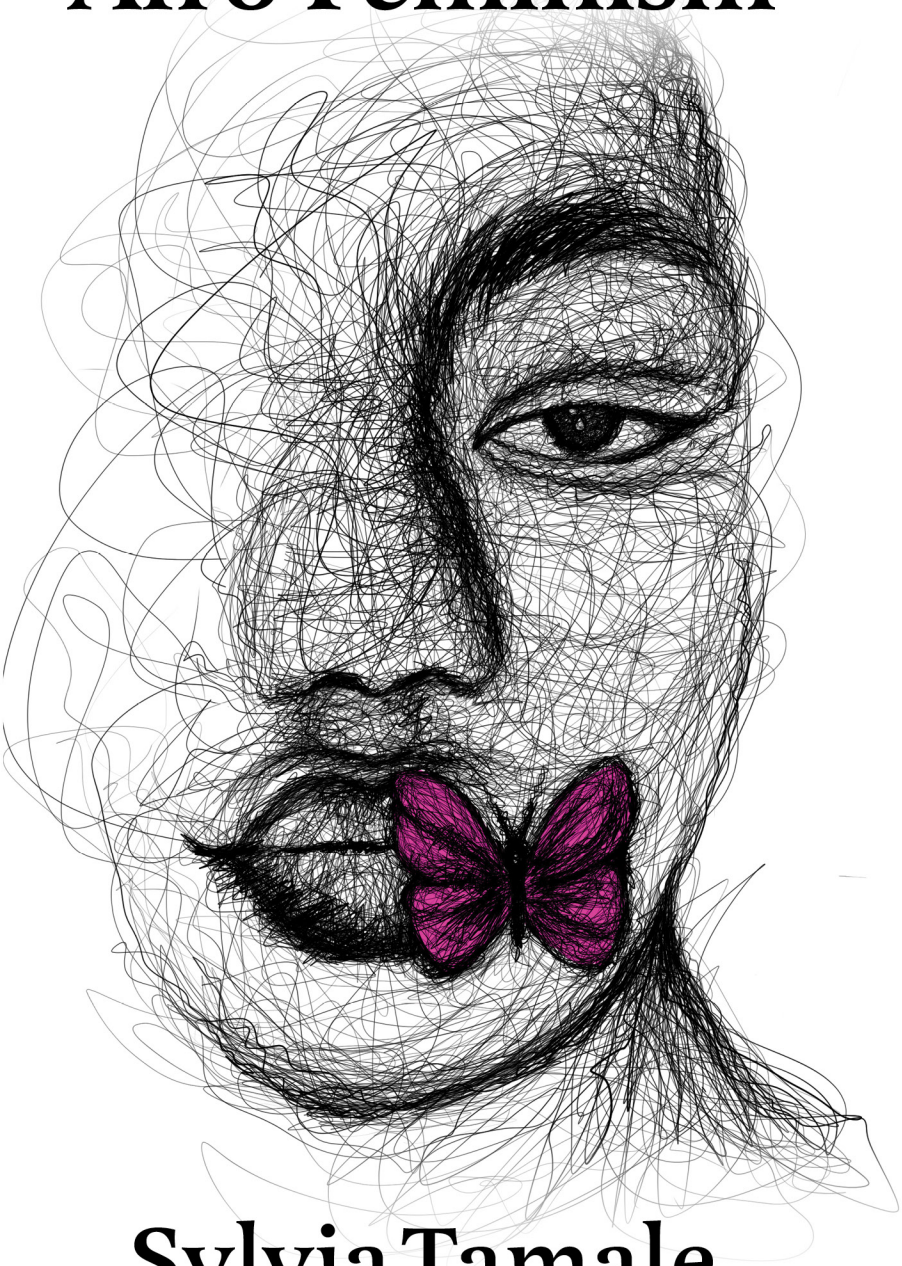
Decolonization and Afro-Feminism



Sylvia Tamale

Praise for *Decolonization and Afro-Feminism*

In this boldly argued and well-written book, the seasoned intellectual/teacher/activist Sylvia Tamale presents Africa as an urgent decolonial Pan-African project. Using an Afro-feminist lens, she gives us a roadmap as she deconstructs gender, sexuality, the law, family and even Pan-Africanism. *Decolonization and Afro-Feminism* makes a major epistemic contribution to charting Africa's way forward. A comprehensive effort, it should have a broad appeal transcending disciplines and other colonial borders. Tamale alerts us to new forms of domination such as digital colonialism. This book will leave you thinking!
—**Oyeronke Oyewumi**, author of *The Invention of Women: Making an African Sense of Western Gender Discourses*

Decolonization and Afro-Feminism is a book we all need! It brings an encyclopaedic rigour and a committed feminist analysis to the study of decolonization and what it offers as a liberatory praxis in contemporary Africa. Sylvia Tamale's scholarship has always been rooted in solidarity with the lived struggles of African feminists, queer communities and African academics, and it shows in her exploration of the many challenges that have shaped contemporary struggles around gender, sexuality, race, justice and Africa's freedom. Essential Reading.
—**Jessica Horn**, Feminist writer and co-founder, *African Feminist Forum Working Group*

In this extraordinary and erudite book, Sylvia Tamale, the distinguished Ugandan scholar and public intellectual, brilliantly dissects and demolishes the dangerous tropes of coloniality that distort our understanding of African societies, cultures, bodies, institutions, experiences, social relations, and realities. She unsparingly and compellingly advances the analytical power and emancipatory possibilities of decolonial feminism. Using the concept of intersectionality she moves seamlessly and examines

with a sense of fierce urgency the decolonial project over a wide range of spheres from ecofeminism to sports, the law, religion, human rights, *Ubuntu*, the academy, family relations, Pan-Africanism, and big data. A must read for all those who value the decolonization of Eurocentric and androcentric knowledges and the recentering of African epistemologies and ontologies. It is a clarion call for the continent's feminist epistemic liberation.
— **Paul Tiyambe Zeleza**, Professor of the Humanities and Social Sciences and Vice Chancellor, United States International University-Africa, Nairobi, Kenya

Intellectually orgasmic! I can't count how many climaxes I reached whilst reading this bold text. Fellow students of Africa, you haven't had your Afro-feminist intellectual rebirth until you read this book. You will learn and unlearn, pack and unpack everything you think you knew about decolonization and Afro-Feminism. It is such an honour to have this brilliant piece dedicated to the students of Africa. The next generation of Afro-feminists have our struggle cut out for us.
—**Anna Adeke**, Feminist and student, Makerere University, Uganda

Decolonization and Afro-Feminism offers an in-depth and well-documented debate on central questions developed by generations of African feminists. It proposes Afro-Feminism as a decolonial project that must incorporate race and coloniality at its heart. Tamale urges African women to rethink sex, gender and the universality of feminism. She challenges concepts and themes of the struggles that have shaped debates about women's oppression, demands for equality, patriarchy, motherhood, sexuality, legal systems, family laws, human rights. For Tamale, Ubuntu serves as a framework for recovering self and redefining one's relationships with others. Yet, beyond race and coloniality, how should we think about and 'do' feminism in Africa, if we don't challenge discriminations, hierarchies, and power relations against women, embedded in our own past and present cultures.
—**Dr. Fatou Sow**, Sociologist, Cheikh Anta Diop University, Dakar, Senegal

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Sylvia Tamale

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Dedicated to Wanafunzi wa Afrika [students of Africa]

Viva Afrika!!

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Acknowledgments

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Some Key Definitions

Afro-Feminism: Although it shares some values with Western feminism, Afro-Feminism distinctly seeks to create its own theories and discourses that are linked to the diversity of African realities. It works to reclaim the rich histories of Black women in challenging all forms of domination, in particular as they relate to patriarchy, race, class, sexuality and global imperialism.[1]

Coloniality: is a concept related to colonialism but goes beyond the mere acquisition and political control of another country. As an ideological system, it explains the long-standing patterns of power that resulted from European colonialism, including knowledge production and the establishment of social orders. It is the "invisible power structure that sustains colonial relations of exploitation and domination long after the end of direct colonialism."[2]

Colonization: The systematic "process by which a people exploit and/or annex the lands and resources of another without their consent and unilaterally expand political power over them."[3] In this book, we refer to European colonization that began in the

1. See *Charter of Feminist Principles for African Feminists*, 2016, available at: http://awdf.org/wp-content/uploads/AFF-Feminist-Charter-Digital-%C3%A2%C2%80%C2%93-English.pdf.
2. Sabelo Ndlovu-Gatsheni, *Coloniality of Power in Development Studies and the Impact of Global Imperial Designs on Africa*, Department of Development Studies University of South Africa, Inaugural Lecture delivered at the University of South Africa, Senate Hall, Pretoria, (16 October 2012).
3. Robert Odawi Porter, "The Decolonization of Indigenous Government" in W. A. Wilson & M. Yellow Bird (eds.), *For Indigenous Eyes Only: A Decolonization Handbook* (pp. 87-108) (Santa Fe, NM: School of American Research Press, 2005) at p. 108.

Americas during the seventeenth century and later spread to Asia and Africa.

Cultural Relativism: In relation to human rights, the idea that the standards of treaty-based human rights are not universal and, therefore, must succumb to the specific cultural beliefs of different societies around the world. Cultural relativists are primarily from the global South and justify their views with the argument that they played no part in defining what are largely considered to be Eurocentric universal rights.

Decoloniality: A specific type of decolonization which advocates for the disruption of legacies of racial, gender and geopolitical inequalities and domination. Walter Mignolo defines it simply as "delinking from the colonial matrix of power."[4]

Decolonization: A multi-pronged process of liberation from political, economic and cultural colonization. Removing the anchors of colonialism from the physical, ecological and mental processes of a nation and its people.

Epistemology: Refers to a philosophical view regarding *how* we know what we know. How, for example, do we learn that women are "inferior" to men? Through what methods, what justifications and what validations?

Gender: The term refers to a feminist analytical tool, viewed through a politico-historical lens, that aids our understanding of how humans relate to each other as "men" and "women." It goes beyond cultural-specific masculine/feminine identities and power relations and is complicated by racial markers. As a colonial/modern institution, gender "functions to limit the range and scope of possibilities for what it means to be"[5] a "man"/ "woman"/ "human" in this world.

Legal Pluralism: The enforcement of two or more legal systems, including social norms and rules, by and on communities. For example, legislative law, shari'a, customary law, common law, community justice, etc.

Lobola: Southern African term referring to the traditional

4. See Walter Mignolo, *The Darker Side of Western Modernity: Global Futures, Decolonial Options* (Durham: Duke University Press, 2011) at pp. xxvii-viii.

5. See Xhercis Mendez, "Notes towards a Decolonial Feminist Methodology: Revisiting the Race/Gender Matrix," *Trans-Scripts* 5 (2005): 41-59.

ceremony where gifts—including livestock and clothes—are given to the bride's family by the groom's to symbolize their gratitude for raising their daughter. It also serves to symbolically cement the relationship between the two families/clans. Most African societies have equivalent terms for the same practice.

Modernity: The ideology that blends capitalist interests with colonialism and coloniality, under the wrong assumption that there is only one global way to pursue development.[6]

Ontology: The philosophical understandings of *what* reality is. When you attempt to understand the nature of poverty, for instance, you will begin with a set of assumptions which underlie and inform your understanding of the nature of poverty and impoverishment.

Ubuntu: An African traditional ideology of justice and fairness based on the philosophies of humanness, communitarianism, solidarity and interdependence.

Universalism: In relation to human rights, the idea that rights (as defined in international human rights treaties) are in-born for all humans and therefore their standards apply to all human beings in the same way regardless of geographical location and cultural context.

Wananchi: Swahili for "ordinary folk." (Singular = mwananchi)

6. See Aníbal Quijano, "Colonialidad del Poder y Clasifcacion Social," *Journal of World Systems Research* 5(2) (2000): 342-388 at p. 343; and Mahmood Mamdani, Tandhika Mkandawire and Wamba-dia-Wamba, "Social Movements, Social Transformation and the Struggle for Democracy in Africa," CODESRIA Working Paper 1/88 (Dakar: CODESRIA, 1988) at p. 3.

1

Introduction

We walked in wisdom with our shadows,
in search of the dead part of ourselves which would be our shelter.
—Yvonne Vera.[1]

Of Counter-Narratives

As the old saying goes, the past is never dead; it is not even past.[2] Every object, concept and individual has a history. When probed more deeply, that history shines a light on the dark underbelly and crevices of the present. No situation, concept or person can ever be fully understood without probing their histories. Hence, decolonization and decolonial projects demand an in-depth appreciation of the history of colonization and all its supporting discourses. It is only with such a comprehension that there can be a successful extrication from the bondage of colonization and domination. It is especially necessary to be alive and alert to the histories of normative concepts that are presented as ahistorical, universal and neutral, including "human rights," "race," "gender," "family" and "law." At the same time colonialism did not mean the

1. Yvonne Vera, *Nehanda* (Toronto: Tsar, 1994) at p. 24.
2. The saying originated from William Faulkner's novel *Go Down, Moses* (New York: Vintage Books, 1940, 1990).

same thing for women and men[3]; for rulers and subjects, or for dominant groups versus ethnic minorities. It also meant different things in different contexts; what happened under British rule in Nigeria looks quite different from what happened in Botswana. Although there are overlaps and similarities in the legacies of European colonialism in Africa, there are also sharp differences between the practices and impacts of the different colonial powers.

Fully aware of these complexities, this book largely examines British colonialism. The term "decolonization" refers to various processes of deconstructing colonial interpretations and analyses of the social world. It is very much in line with Frantz Fanon's views in *The Wretched of the Earth*.[4] For the colonized, decolonization of the mind is really about returning to the annals of history to find ourselves, to become fluent in our cultural knowledge systems, to cultivate critical consciousness and to reclaim our humanity.

Since the latter half of the twentieth century, critical thinkers from the global South have been involved in robust critiques challenging the direct and indirect manifestations of colonial domination and global hierarchies. They have carefully revealed intersecting global privileges and oppressions based on European hegemonic notions of race, gender, sexuality, class, spirituality, and so forth. They have also rejected the epistemic hierarchy which privileges Western knowledge at the expense of non-Western knowledge systems. Many have sought to uncover lost Indigenous histories and knowledge systems that were deliberately excluded, suppressed and erased.[5] But the imperial machinery never eases its stranglehold over the world and on knowledge production and distribution. Calls for decolonization and decolonial thinking have intensified in the twenty-first century against the backdrop of the increasingly powerful forces of globalization and their suffocating apparatuses. However, perhaps with the exception of South Africa,

3. Or indeed for other gender identities present in the encounter with colonial powers and gender discourses.

4. Frantz Fanon, *The Wretched of the Earth*, (New York: Grove Weidenfeld, 1963). Also see Albert Memmi, *The Colonizer and the Colonized* (Boston: Beacon Press, 1965).

5. See e.g., Basil Davidson, *The Lost Cities of Africa* (Boston: Little Brown, 1959); Ade Ajayi and Ian Ispie (eds.), *A Thousand Years of West African History* (Ibadan: Ibadan University Press, 1965); and Okot P'Bitek, *Song of Lawino and Song of Acol* (Oxford: Heinemann Educational Publishers, 1966, 1967).

Africa's geopolitical and conceptual awareness about issues of decolonization and decoloniality remains very low.[6]

Some people argue that Africans should "move on" and stop whining about colonialism. "When will Africans end blaming history and external factors for their self-inflicted problems?" they ask. Several leaders—including President Obama and former UN Secretary-General Kofi Annan—are also on record for asking Africans to stop blaming slavery, colonialism and imperialist oppression for their sociopolitical woes. Tanzanian professor Issa Shivji notes: "The contemporary neo-liberal discourse has one fundamental blind spot. It treats the present as if the present has had no history."[7] All scientists know that you cannot solve any problem without tackling its root causes. Africa's relationship to the Trans-Atlantic slave trade, colonialism and imperialism is unique and its structural legacies run so deep that it would be foolhardy, even dangerous, to gloss over them in any analysis of its current position in the world. The intensified plunder and exploitation of Africa under the guise of "liberalization," "humanitarianism," "global war on terror" and calls for "fast internet for all" must also be unveiled. Of course, ultimately, Africans bear the main responsibility for emerging from its political and economic mess. Postcolonial scholars such as Achille Mbembe have explored the ways, through coloniality, that the political elite within African "postcolonies" have shaped national economies and state apparatuses.[8] However, another major blind spot within mainstream decolonial scholarship on Africa is gender; there is a notable masculinist bias in the field that totally ignores gender theorization. Africans need comprehensive understandings of the

6. One needs to question why South Africa is abuzz with decoloniality debates at this particular historical moment. Is it related to the post-1994 democratic crisis, whereby the country is only just grappling with the barest notion of the meaning of neocolonialism as articulated by Kwame Nkrumah in the 1960s? Decolonization discourse had been popular in the rest of Africa (particularly under the Pan-Africanist umbrella and in academic circles) during the post-independence period until it was virtually "killed" by the so-called development strategies introduced to Africa by the World Bank and IMF in the late 1980s and early 1990s.

7. Issa Shivji, "Good Governance, Bad Governance and the Quest for Democracy in Africa: An Alternative Perspective," Working Paper No. 8 (2019), available at: http://www.hakielimu.org/files/publications/document67good_bad_governance_en.pdf [accessed May 01, 2019].

8. See Achille Mbembe, "Provisional Notes on the Postcolony," *Journal of the International African Institute* 62(1) (1992): 3-37.

foundations to be uprooted before embarking on the journey of genuine decolonization and the struggle for decoloniality.

How is it that in 2020 we are still attending seminars and conferences where Euro-American scholars spend one hour rehashing simplistic outdated arguments that were discredited by scholars in the global South decades ago? Neo-Malthusian ideas—that Africa's main problem is over-population coupled with staged-development "take-off" and "clash of civilizations" theories—still abound.[9] It is all part of Western coloniality, hegemony and dominance in knowledge production.

The colonization of Africa by European states was executed through various layers using diverse strategies over a period that span centuries. The continent was forced into the Eurocentric Westphalian world order ill-fitted to the diverse political realities and interests of the continent. Perhaps the most important historical process was the massive theft of Africa's land and resources by Euro-Americans. And the key apparatus used to justify and organize such plunder was the invention of the concept of race. Prior to the seventeenth century, human races as we know them today did not exist. Rather, they were invented by Anglo-Americans as a politico-economic manoeuvre designed to rationalize privilege and domination. During the Atlantic slave economy of the time, the ruling class offered indentured Europeans (*de facto* slaves) several civil/social privileges that were denied to slaves from Africa on the basis of phenotype. Hence racism results from the fiction of "race" constructed on the basis of pseudo-science to rationalize the double-standard treatment.[10]

The idea of race thus replaced "the relations of superiority and inferiority established through domination" and reconceived "humanity and human relations fictionally, in biological terms."[11] My skin colour, shape of eyes and nose, hair texture have nothing

9. See Edward Said, "The Clash of Ignorance," *The Nation* (October 22, 2001).

10. See Theodore Allen, *The invention of the White Race, Vol. 2: The Origins of Racial Oppression in Anglo-America* (London & New York: Verso, 1997); Jonathan Scott, "Before the White race was invented," *Against the Current* 72 (1998): 46-49; David B. Davis, "Constructing Race: A Reflection," *The William and Mary Quarterly* 54(1) (1997): 7-18 at p. 7; and Achille Mbembe, *Critique of Black Reason*, (Durham: Duke University Press, 2017).

11. María Lugones, "Heterosexualism and the Colonial/Modern Gender System," *Hypatia* 22(1) (2007): 186-209 at p. 190.

whatsoever to do with my biological structure, but rather, with my ancestral/geographical environment. However, we would be falling into the trap of modernity-coloniality if we focused exclusively on race as the mechanism of geopolitical and social hierarchization. As Nigerian scholar Oyeronke Oyewumi notes about the colonial situation: "The racial and gender oppressions experienced by African women should not be seen in terms of addition, as if they were piled one on top of the other."[12] Argentinian-born feminist philosopher María Lugones also reiterates that the invention of race was simultaneously a reinvention of "gender" and both are integral to these inequities. She argues that coloniality constructed the *White* bourgeois *man* as "the human being par excellence" and White women as "the human inversion of men."[13] Indigenous people under the colonial "civilizing mission" were viewed as lesser humans (nearer to animals)—as dehumanized males and females (i.e., not men and not women).[14] White women were subordinated to White men but always remained more empowered than Indigenous men and women who were imagined as degenerate beings. And in the colonial/modern gender system Indigenous females were reduced to "instrumental vehicles for the reproduction of race and capital."[15]

Hence, bolstered by religion, law, education and reconstructed cultures, colonization not only reinvented notions of "men" and "women" in Africa, but also the way that they related to each other. Under this new logic, colonized women were either diminished or erased from important areas of social and public life.[16] Indigenous sex/gender systems were altered and their conceptualization of sexualities refocused through the lenses of excesses, immorality

12. Oyeronke Oyewumi, *The Invention of Women: Making African Sense of Western Discourses* (Minneapolis: University of Minnesota Press, 1997) at p. 123.

13. María Lugones, "Toward a Decolonial Feminism," *Hypatia* 25(4) (2010): 742-59 at p. 744.

14. Ibid.

15. See Xhercis Mendez, "Notes towards a Decolonial Feminist Methodology: Revisiting the Race/Gender Matrix," *Trans-Scripts* 5 (2005): 41-59 at p. 45. Also see Sylvia Wynter, "Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards the Human, After Man, its Overrepresentation—An Argument," *CR: The New Centennial Review* 3(3) (2003): 257-337.

16. Gurminder Bhambra, "Postcolonial and Decolonial Dialogues," *Postcolonial Studies* 17(2) (2014): 115-121.

and negativity.[17] Social patterns were disrupted and Africa's cosmological understanding of society was invaded by a Europeanized "modernity." Significantly, colonial processes restructured hierarchical power relations based on gender, class, education, sexuality, etc. The dichotomous understanding of gender in terms of polarized, hierarchized identities (i.e., masculinity vs femininity) was imposed on the colonized through processes of colonialism.[18] To put it differently, the political economy of gender relations between African women and men was totally altered by colonialism, engendering new structural drivers of inequities. These included, for example: new economic systems (based on capitalism); new political systems (based on liberal premises); new resource distribution systems (e.g., commodification of land); new religions (based on Christian values); new laws (e.g., reconfigured customary laws); new education system (modeled on Europe); new social norms (who/what is valued); etc. For example, under the British system of indirect rule in Nigeria, colonialists recognized the authority of male chiefs, totally overlooking that of female chiefs.[19] This worked to alienate women from the newly-created public sphere. And as the handmaidens of colonization, Christian missionaries introduced Western notions of gender hierarchies that had hitherto not been known in Africa.

Lugones further points out that "Modernity organizes the world ontologically in terms of atomic, homogeneous, separable categories."[20] There is need to reject that understanding and recognize that in fact race is inseparable from other categories such as gender and sexuality. There is no "race" without colonial constructions of a binary, hierarchical, sex/gender system, incorporating *all* "women" into one "racialized" group or another. As a non-Western "woman of colour," I will suffer discrimination based on a fictitious notion of race (skin colour) *and* hetero-patriarchal *constructions* of gender. Hence, the process of capitalist

17. See generally Sylvia Tamale (ed.), *African Sexualities: A Reader* (Oxford: Pambazuka Press, 2011).

18. See Oyeronke Oyewumi, *The Invention of Women*, Note 12.

19. Ibid. at pp. 123-124.

20. María Lugones, "Toward a Decolonial Feminism," Note 13 at p. 742.

exploitation cannot be separated from racial and gender hierarchization. The dominance and pervasiveness of coloniality in the modern world is so fundamental it has shaped the way the world perceives us and most of us have in turn internalized its constructions of who we are. Decolonial feminism usefully offers a lens to understand the hidden-from-view interconnections between race and gender and the relation of each to normative heterosexuality.[21]

Imperialism and capitalism gave birth to colonialism, which has been kindled and sustained by the logic of fraud, lies, brutal repression, pillage, exploitation and manipulation. Lies are spread through the power of language and discourse. Using tools such as mass media, education, religion and law, colonialists constructed narratives of White supremacy and Black inferiority, male supremacy and female inferiority. Africa is portrayed as a backwater of failed states, trapped in the vortex of underdevelopment. The colonial machinery never goes to sleep and is extremely efficient. It is always in search of new ways of reinventing itself. Its main functions are twofold: to continue exploiting (neo)colonies; and to maintain the politico-economic enslavement necessary for its own existence.[22]

Colonial intellectualism deliberately denigrated Indigenous oral traditions and wisdom as illegitimate methodologies and tools of storing records. Given that Western knowledge systems use the indicator of the written record to separate the human eras of "prehistory" and "history," it is no wonder that traditions that depend on oral wisdom are perceived as lacking history. According to Bethwell Ogot, "It was argued at the time that Africa had no history because history begins with writing and thus with the arrival of the Europeans. Their presence in Africa was therefore justified, among other things, by their ability to place Africa in the 'path of history.'"[23]

The trend of Orientalist othering continues today as seen in a

21. Ibid.

22. L. Goncharov, "New Forms of Colonialism in Africa," *The Journal of Modern African Studies* 1(4) (1963): 467-474.

23. Bethwell A. Ogot, "African Historiography: From Colonial Historiography to UNESCO's General History of Africa," in Bethwell Ogot (ed.), *General History of Africa Vol. 5—Africa from the sixteenth to the eighteenth century,* pp. 71-80 (Oxford: Heinemann, 1992) at p. 71.

recent media posting. On July 3, 2019, the *New York Times* placed an advertisement for a vacancy, looking for a bureau chief for its Nairobi office. It declared that:

> Our Nairobi bureau chief has a tremendous opportunity to dive into news and enterprise across a wide range of countries, from the deserts of Sudan and the pirate seas of the Horn of Africa, down through the forests of Congo and the shores of Tanzania. It is an enormous patch of vibrant, intense and strategically important territory with many vital story lines, including terrorism, the scramble for resources, the global contest with China and the constant push-and-pull of democracy versus authoritarianism. The ideal candidate should enjoy jumping on news, be willing to cover conflict, and also be drawn to investigative stories. There is also the chance to delight our readers with unexpected stories of hope and the changing rhythms of life in a rapidly evolving region.

The way the posting is framed—using stereotypical images of Africa as exotic, wild and primitive—is designed to Other; representing the continent as everything that the West is not. Using phrases such as "pirate seas," "forests of Congo," "vibrant, intense patch," "terrorism," "authoritarianism," exposes how the *Times* invoked socially-constructed markers with which the potential candidate—who would "delight *our* readers" (invoking the insider "us")–can distinguish themselves from the outsider "them." Here, difference is based on the superiority of the "civilized" potential candidate over the "inferior" Other, the subject of their reports. The advertisement implied that positive stories emanating from the continent were rare, further entrenching homogenizing and racist attitudes towards Africans. It depicts the classic clichéd Africa as depicted in Binyavanga Wainaina's 2005 satirical essay, "How to Write About Africa."[24]

A month later, on August 4, 2019, more than 2,000 people attended an open-air party at the colonial Museum for Central Africa in Belgium. White partygoers were dressed in pith helmets

24. Binyavanga Wainaina, "How to Write About Africa," *Granta: The Magazine of New Writing* 92 (Winter 2005): 91-95. Available at: https://granta.com/how-to-write-about-africa/ [accessed August 9, 2019].

and leopard-skin prints, and some had their faces blackened. The main stage was festooned with skulls on sticks. For the revellers, this was simply "an African fancy dress party."[25] The offensive museum where the event happened is "Packed to the brim with more than 180,000 looted items, including the beheaded skulls of vanquished tribal chiefs, and more than 500 stuffed animals slaughtered by hunters, the museum celebrated the exploits of the Belgians who turned a huge swathe of Africa into a slave state."[26]

These two examples bring home the essence of the colonialism that is still active in the contemporary Western imagination. Several questions thus emerge: How do we divert the paternalistic, fetishized and poisoned gaze of the Western reader from our beloved continent? How do we develop critical consciousness to counter racist patriarchal hegemonic power? Who will connect the ideological dots of racism, colonization, capitalism, sexism and heterosexism in ways that our children understand? Can we move beyond Eurocentric knowledge hegemonies? How do we navigate Eurocentric "modernity" without losing our "Africanness"?

For African feminists, while closing gender gaps and sex-ratio disparities are important, it is really the *meaning* attached to gender that is central to this struggle. Those disparities only make sense if they are linked to "context-specific histories of the interplay between class, ethnicity and race."[27] The very construction of gender, wrought through colonial epistemology and practices, has created certain notions of African "men" and "women" that require unpacking.

Several institutions around the continent continue to reflect masculinist and imperialist/modernist ideals that place the majority of citizens at the periphery of existence. These include statecraft, government rationality and social organization (e.g., the family). Symbolic gestures of inclusion provided in the rhetoric of "gender equality" and "gender mainstreaming" within the context

25. James Crisp, "Africa party in colonial museum sparks anger after partygoers dressed in pith helmets and blackface," *The Telegraph* (August 7, 2019). Available at: https://www.telegraph.co.uk/news/2019/08/07/africa-fancy-dress-party-grounds-colonial-museum-sparks-anger/ [accessed August 9, 2019].

26. Ibid.

27. See Jane Bennett, "Exploration of a 'Gap': Strategising Gender Equity in African Universities," *Feminist Africa* 1 (2002): 34-63 at p. 38.

of neoliberal systems will certainly not deliver freedom or gender justice.[28] The conceptual thinking and writing of African feminists in the past five decades on colonialism and coloniality must be taken seriously as a first step to reconceptualize citizenship, engender inclusive politics and realize a radical transformation in the geopolitical position that Africa currently occupies in global affairs. This book is my humble contribution in the efforts to construct a counter-hegemonic feminist narrative for future generations. It is part of the narrative that does not simply commit to the struggle for decolonialization, but also recognizes the dynamics of gender within the struggle for new ways of being.

The Meaning of Africa(ns)

Africa is a vast continent of fifty-four countries with diverse and rich cultures and different relationships to economies. It is thus impossible to generalize about "Africa."[29] Numerous differences abound even within the 54 countries. Depending on the context, these exhibit important variations in the ways the continent's myriad communities and groupings deal with birth, marriage, descent, death, succession and so forth. Moreover, as these cultures encounter rapidly-changing societies, they adapt and evolve. As Charles Ngwena argues, "Africanness presents itself in the form of a lifelong conversation without an end precisely because of the ever-evolving, unfinished, unfolding multiplicities of conjectural African identifications at play in the grand drama of life."[30] But Kwame Appiah argues that "a specifically African identity began as a product of a European gaze."[31] South African scholar Jane Bennett

28. See Patricia McFadden, "African Feminist Perspectives of Post-Coloniality," *The Black Scholar* 37(1) (2007): 36-42. Also see Akhona Nkenkana, "No African Futures without the Liberation of Women: A Decolonial Feminist Perspective," *African Development* 40(3) (2015): 41-57.

29. The most populous country, Nigeria, has at least 200 million people and over 500 Indigenous languages. See World Population Review, available at: http://worldpopulationreview.com/countries/nigeria-population/ [accessed December 9, 2019].

30. Charles Ngwena, *What is Africanness? Contesting Nativism in Race, Culture and Sexualities*, (Pretoria: Pretoria University Law Press, 2018) at p. 269.

31. Kwame Anthony Appiah, *In My Father's House: Africa in the Philosophy of Culture*, (New

agrees when she writes that "In a very real way, there is no such thing as Africa, except as such a space is highlighted and debated in opposition to the discourses that stereotype the continent as undeveloped, its peoples as incapable of self-governance or poor and its cultures as primitive."[32] Nonetheless, for the purposes of the decolonization and decolonial projects, it is extremely important to treat Africa as one historical unit. The vast majority of the continent shares a common history of slavery, colonialism and oppression which has fostered a more unified political approach to the challenges of underdevelopment, geopolitical marginalization and economic exploitation.

Sitting at the bottom rung of the racialist construct, Black people have a common cause regardless of location, ideology, class, gender and other life circumstances; "blackness" becomes their tribe, their nationalism. Hence, my references throughout this book to "Africans" or "African culture/tradition," by no means indicates that I am unaware of the diversities; I use the terms advisedly and politically to capture the shared heritage of African belief systems, as well as the people's shared and enduring legacies of enslavement, colonialism, racism and neoliberalism.[33] When the empire strikes the African "Other," it completely disregards the nuanced diversities. As such, Africa's decolonial and decolonization struggles must also be solidified to act as one ecosystem.

The shared values of communal life and group solidarity, embedded in the philosophical concept of *Ubuntu*, for example, also differentiate African people from modern Euro-American societies.[34] While communal social formations are a historical

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York: Oxford University Press, 1992) at p. 71. Also see Firoze Manji, "Emancipation, Freedom or Taxonomy? What Does it Mean to be African?" in Vishwas Satgar (ed.), *Racism, after Apartheid: Callenges for Marxism and Anti-Racism*, pp. 49-74 (Johannesburg: University of Witswatersrand, 2019); and Amilcar Cabral, *Unity and Struggle: Speeches and Writings*, Trans. by M. Wolfers, (New York: Monthly Review Press, 1979).

32. Jane Bennett, "Subversion and Resistance: Activist Initiatives," in Sylvia Tamale (ed.), *African Sexualities*, Note 17, pp. 77-100 at p. 80. Also see Achille Mbembe, *Critique of Black Reason*, Note 10.

33. Gayatri Spivak referred to this notion as "strategic essentialism" to capture the deliberate temporary erasure of diversities amongst Othered communities for the purpose of achieving certain goals. See Gayatri C. Spivak, "The Rani of Sirmur: An Essay in Reading the Archives" *History and Theory* 24(3) (1985): 247-272. Also see Charles Ngwena, *What is Africanness?* Note 30.

34. For a more detailed discussion of the philosophy of *Ubuntu*, see chapter 6 of this book.

product of all societies around the world, collectivism or communitarianism (mainly driven by women) in Africa has developed as a resilient adjustment to harsh economic conditions. Capitalism, as introduced in Africa, created serious patterns of uneven development. This consigned huge proportions of the population into rural informal economies in which these communal values and moral economy subsist. The term "moral economy" links specific relationships and patterns of reciprocity of material subsistence with shared non-monetary values, and is usually contrasted with market- or self-serving materialism.[35] Writing about this complex system of social strategies and institutions that are devised to minimize the risk of food insecurity in Mali, Alayne Adams argues that the "moral economy mediates the flow of non-market claims and transfers."[36] Furthermore, "The right to make claims on others, and the obligation to transfer a good or service, is embedded in the social and moral fabric of the rural community."[37]

Thus, even as individualism has penetrated the market-driven societies of neoliberal Africa, many fundamental aspects of African lives remain anchored in collective relationships and efficacy, for which women are central. The communitarianism goes beyond the mere aggregate of isolated individuals but where individuals are part of a unity that is interdependent and mutually beneficial. This "index of the African cultural fingerprint," which Makau Mutua describes as "a set of institutional and normative values governing the relationship between individuals, the society, and nature" shapes their way of being and doing.[38] But still, as the reader navigates through this book, they must constantly remember that the freely applied broad brushstroke references to "Africa" belie deep complexities, differences, contestations and fluidities.

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35. See E. P. Thompson, "The Moral Economy of the English Crowd in the Eighteenth Century," *Past and Present* 50 (1971): 76–136; and James Scott, *Moral Economy of the Peasant* (New Haven, CT: Yale University Press, 1976); *Cf.* James Carrier, "Moral Economy: What's in a Name," *Anthropological Theory* 18(1) (2018): 18-35.

36. Alayne Adams, "Food Insecurity in Mali: Exploring the Role of the Moral Economy," *IDS Bulletin* 24(4) (1993): 41-51 at p. 41.

37. Ibid. Also see, Mattia Fumanti and Pnina Werbner, "The Moral Economy of the African Diaspora: Citizenship, Networking and Permeable Ethnicity," *African Diaspora* 3 (2010): 2-11.

38. Makau Mutua, *Human Rights: A Political and Cultural Critique* (Philadelphia: University of Pennsylvania Press, 2002) at p. 77.

Finally, in this book "Africa" is mostly used in contradistinction to "the West." What exactly does "Western" mean? By invoking the West against Africa aren't we falling into the same trap of binarizing and homogenizing that this book warns against? As scholars such as Lucy Allais correctly argue, using the term "Western" to describe mainstream canon would only perpetuate exclusions (specifically the exceptions to the orthodox mainstream *within* the West).[39] Let me be clear: When the book critiques "Western" thought and/or ideologies, these should not be essentialized as homogenous or monolithic. The meaning or idea of a "global North" or "West" goes beyond geographical location; traditionally, it referred to Western Europe, North America and Australia. Today, we can add China, Japan, South Korea, Russia and other influential states that are exporting finance capital to the global South. While processes of colonialism and neocolonialism emanate from these regions, we should take care not to use the term in a blanket fashion. In other words, Western thought is not always synonymous with colonial thinking. Historically, many scholars and thinkers located in the West (Whites and non-Whites) have been extremely critical of colonial power and practices, persistently theorizing alternatives. Indeed, such counter-hegemonic discourses from hundreds of scholars located in the West have inspired the anti-colonial and decolonial movements for a long time. Many of them are referenced in this book. Therefore, it needs to be made clear from the outset that it is the neoliberal, White-centric/supremacist, binary/Cartesian, intellectually-arrogant depoliticizing kind of Western thought that this book roundly rejects.

Goals and Organization of the Book

The overall objective of this book is to bring to the fore feminist perspectives within the African decolonial and decolonization understandings, showing the intersectional dynamics between forces such as racialism, capitalism and patriarchy. While racialist/

39. See e.g., Lucy Allais, "Problematising Western Philosophy as one Part of Africanising the Curriculum," *South African Journal of Philosophy* 35(4) (2016): 537-545.

gender ideologies formed the life-spring of colonial expansion and violence, it was buttressed by other systems such as class and capitalism. That is not to say that the ideologies and practices of African feminist movements themselves are not in need of decolonization and decolonial interventions.[40] Far from it, and as the book traverses the decolonial and decolonization landscape through a feminist lens, it will suggest some of the ways that Pan-African feminisms can begin to disentangle themselves from old colonial ways of thinking and doing. The aim is to ensure that Europe's colonization of Africa is not tucked away as part of a distant receding history but instead viewed as a living reality and legacy.

Power and resistance are the themes that bind the chapters of this text together. The book represents bite-size glimpses of my personal intellectual and activist energy over the thirty years that I have been part of the African feminist movement. The meaning of Africa, anticolonial debates, research, academic feminist legal reform angled through legislation, litigation and protests—I have been in the middle of it all. Rather than the chapters being cumulative in nature, the book is more of a kaleidoscope of ideas and references. The Africanist scholar will be familiar with most of the material but may be less familiar with the Afro-feminist lens through which decoloniality is explored and understood. The book is written with the eyes and ears of young Africans in mind, particularly those grappling to understand some complex issues pertaining to Afro-Feminism, decolonization/decoloniality and the law in this era of global finance capitalism. It strives to present, in a fairly readable fashion, the key debates, controversies and perspectives on some facets of these important issues.

Chapter one establishes the backdrop against which the rest of the book is built. Chapter two elaborates on the processes of decolonization and decoloniality, suggesting an effective approach to Africa's liberation project. Chapter three introduces African feminisms within the context of decoloniality. Here, I explore the landscape of women and gender studies on the continent before zeroing in on the concept of intersectionality and its link to

40. See Marnia Lazreg, "Decolonizing Feminism," in Oyeronke Oyewumi (ed.) *African Gender Studies: A Reader,* pp. 67-80 (New York: Pelgrave Macmillan, 2005).

decolonial framings. The chapter closes with a discussion of a particular form of intersectionality which entails human oppression within patriarchy and its connection to the exploitation of the natural environment. Here, Africa's traditional relationship with nature is linked to the concept of Afro-ecofeminism. Chapter four challenges the coloniality of the normative concepts of sex, gender and sexuality. This is done through the embodiment of South African Olympic athlete Caster Semenya. Through a juxtaposition of Semenya's story with that of another Olympian, Michael Phelps, the chapter analyzes the colonial power dynamics at play in reinforcing dualistic gender norms and heteronormativity.

Next, the book tackles the issue of legal pluralism, as it is understood and applied on the continent, in chapter five. Issues relating to customary law, popular justice and religious relativism are critically analyzed in the context of coloniality. The sixth chapter unpacks the concept of human rights, particularly its relevance to gender justice; the chapter argues that the very concept of "gender equality," with its roots located in the dynamics of a class structure (inherent in a capitalist mode of production) rings hollow to the lived experiences of most African women. The African concept of *Ubuntu* is flagged as one possible alternative for women's social justice. In chapter seven, the work turns to the subject matter of moving the African academy towards decolonial and decolonizing praxis and social justice. What role do these institutions, whose roots and discourse are deeply embedded in colonial history, play in lifting the continent out of underdevelopment? After a brief discussion of internalized colonization, the chapter suggests five different ways that the African academy can liberate itself from the yoke of colonialism. The penultimate chapter discusses the institution of the family in Africa using Uganda as a case study. It examines the role of the family in perpetuating hetero-patriarchal capitalism and discusses the efficacy of public interest litigation as a strategy for gender justice. The final chapter investigates the Pan-Africanist movement from a feminist point of view. The aim is to surface the work and ideas of women which have been invisibilized within this historical movement. An epilogue at the end of the book

charts out Africa's challenges in the age of big data and the new digital colonialism.

2

The Basics of Decolonization and Decolonial Futures

i lost cultures
i lost a whole language
i lost my religion
i lost it all in the fire
that is colonization

so I will not apologize
for owning every piece of me
they could not take, break
and claim as theirs.
Ijeoma Umebinyuo[1]

Although not alone in having experienced the ravages of colonialism, Africa is unique in the world in having been the birthplace of the trans-Atlantic slave trade. The unprecedented turmoil, painful dislocation and racially-based colonialism that directly resulted from the dynamics of this trade was to reshape the socioeconomic and political structures of the continent forever. Discourses that perpetuated White racial superiority and privilege

1. Accessed via tumblr: https://legendofpooja.tumblr.com/[accessed January 10, 2020].

while denigrating anything African were unleashed on the global stage. Such beliefs were mediated through ideologies of gender and sexuality, chiseled into the minds of Africans through colonial discourses. Despite the formal independence of African states, the material legacies and deep psychological scars that this history inflicted on the continent and its people are still fresh more than four centuries later.

Our decolonization and decolonial efforts have largely been simply picking at the scabs of the deep scars that colonialism and coloniality left in their wake. The unhealed scars are still seen in the linear shapes of the boundaries that make up Africa's 54 nation states, in its legal, political and education systems as well as religious institutions. They are evident as the invisible tentacles that drive and direct our economies. We experience them as internalized discourses of power and submission in people's social, political and religious lives. The work of decolonization and decolonial rethinking must entail much more than Band-Aid approaches for such complex wounds as those left by our colonial histories, beginning with fully appreciating the structural, institutional and psychological linkages that still link Africa to Western neocolonial interests and exploitation.

Africa's Decolonization and Decolonial Reconstruction

The struggle for decolonization and decolonial liberation is as old as colonization. Indeed, the expressions and articulations of decolonization long predate its theoretical emergence. As devastating as colonialism and its legacies have been to the African continent, there are plenty of positive stories about resistance, subversion and transformation. Some of those stories have been documented while others have not, but they all demonstrate that the phenomenon is neither indomitable nor all-encompassing. The vast majority of colonized people have always resisted the dehumanization, brutalization and subjugation of the colonizers. Despite concerted efforts to erase the history and humanity of Africans, and to render them expendable, the people of African

heritage have, in many ways, endured with their rich cultures, intellectualities and identities.

Undoing the legacies of colonialism will involve complex, methodical and creative approaches that will span centuries. Colonialism was not just a political or cultural imposition but at its heart lay the development and export of finance capital. Economic developments in Europe during the sixteenth century necessitated the expansion of its empires in order to sustain economic growth. The burgeoning capitalist system had to be fed with new sources of industrial raw materials, cheap labour and new consumer markets for their goods. To achieve these goals, Europeans used brute force coupled with the contradictory ideologies of difference and assimilation. Such ideologies were key to rationalizing and justifying the force which was deployed. Those ideologies were also couched in the language of "civilization" and "development." Their real purpose was to expand the borders of Europe's empire by restructuring and integrating foreign societies into its socioeconomic systems.

The tension between the interrelated ideas of difference and assimilation are best described in the seminal works of Edward Said's *Orientalism* and Saliha Belmessous' *Assimilation and Empire.*[2] In order to justify Europe's colonization of Africa, it was important to create a discourse of difference between Europeans and Africans, depicting the race and culture of the former as superior to that of the latter. By casting the African as the inferior "Other," Europe paved the way for taking over the continent and transforming Africans into Europeans through the process of assimilation.[3] The language of Orientalism reflects a racism based on cultural differences that justify intervention through religion, law, dress, morality, democracy, language and so forth. In other words, for "Oriental Africa" to attain Europe's Occidental development, it had to adopt the ways of Europe. The gist of this colonial argument

2. See Edward Said, *Orientalism: Western Conceptions of the Orient* (New York: Pantheon Books, 1978); and Saliha Belmessous, *Assimilation and Empire: Uniformity in French and British Colonies, 1541–1954* (New York: Oxford University Press, 2013).

3. Although in his book *Orientalism* the Palestinian scholar Edward Said was writing about European perceptions of people from the Middle East as "the Other," the term has been widely adopted in decolonial theory to describe Europe's racist perception of *all* non-Western cultures. Also see Jane Gangi, *Genocide in Contemporary Children's and Young Adult Literature: Cambodia to Dafur* (New York: Routledge, 2014).

continues to hold sway even today through concepts such as universalism, objectivity and neutrality.[4]

Nowhere was the ideology of assimilation better exemplified than in the African French empire (*l'Afrique Noire)* where France aimed to convert African "natives" into Black French citizens. They couched it as part of their *mission civilisatrice (*civilizing mission) and convinced "natives" to denounce their language, culture and laws and adopt the French ways of living.[5] The reward for those who rejected their African roots would be French citizenship and joining the elite class of "Black Frenchmen." But Black Frenchmen never stood at par with their White counterparts. One such man who went through the process of "Frenchification" was Senegalese President Léopold Sédar Senghor, who later rejected assimilation and described it in graphic terms: "With docility we accepted the values of the West; its discursive reason and its techniques… Our ambition was to become photographic negatives of the colonisers: 'black-skinned Frenchmen.' It went even further, for we would have blushed, if we could have blushed, about our Black skin, our frizzled hair, our flat noses, above all for the values of our traditional civilization… Our people… secretly, caused us shame."[6]

The prefix "de-" in the terms "decolonization" and "decoloniality" connotes an active action of undoing or reversal. For Africa, the concept is heavily burdened with deep histories, many of whose consequences are irreversible. It speaks to the dismantling of several layers of complex and entrenched colonial structures, ideologies, narratives, identities and practices that pervade every aspect of our lives. Most of these systems have become commonplace if not "common sense" in our day-to-day lives, among them religion, language, education, dress, music, media, public holidays, housing, sports, etc. We witness the legacies of colonization every day when: our presidents beg for aid from

4. See Saliha Belmessous, *Assimilation and Empire,* Note 2. Bruce Hall argues that racism against Black Africans existed at the hands of Arabs prior to colonialism in the Muslim Sahel. See Bruce Hall, *A History of Race in Muslim West Africa, 1600-1960* (Cambridge: Cambridge University Press, 2011).

5. J. P. Daughton, *An Empire Divided: Religion, Republicanism, and the Making of French Colonialism, 1880-1914* (Oxford: Oxford University Press, 2006).

6. Quoted in Martin Meredith, *The State of Africa: A History of the Continent Since Independence* (London: Simon & Schuster, 2011) at p. 59.

Western capitals; our governments sell off a natural forest for foreign investors to replace it with an industrial park; we refer to the largest lake on the continent as "Lake Victoria"; the riot police sprays tear gas into a peaceful crowd protesting oppression; an African bureaucrat demands that two brothers swear an affidavit to prove that they are related because their last names are different; a teacher punishes a student for using their mother tongue; people use dangerous skin-whitening products to bleach their skins; and when an MP adorning a *kitenge* shirt and sporting dreadlocks is chased away from the parliamentary floor for "inappropriate decorum."

And yet, Africa must think beyond *de*-construction; after all, the term itself forces us back, time and again, into the arms of the "colonial." So, ultimately, for Africans, the agenda for decolonization and decolonial activism must involve *re*-constructions that focus on the following: reclaiming our humanity; rebuilding our territorial and bodily integrity; reasserting our self-determination; restoring our spirituality; dismantling the material and symbolic foundations of the colonial-capitalist state; decentering Western hegemonies of knowledge and cultures regarding race, gender, sexuality, etc.; reparations of historical wrongs; and embracing the *Ubuntu* philosophy, whose worldview is underpinned by the principles of: "the interconnectedness of all things; the spiritual nature of human beings; collective/individual identity and the collective/inclusive nature of family structure; oneness of mind, body and spirit; and the value of interpersonal relationships."[7] Above all, our Africanness, our womanness and our subversive agency should be celebrated.

The African decolonization/decolonial project is fundamentally about one thing: restoring the dignity of African people. By no means is it focused on a naïve desire to return to a romanticized pre-colonial past. Rather, it is about *reconstructing* the relationship between African people and the colonizers.[8] The world has changed

7. Mekada Graham, "Expanding the Philosophical Base of Social Work," in Viviene Cree (ed.), *Social Work: A Reader*, pp. 142-48 (London: Routledge, 2011) at p. 144.

8. Jon Austin, "Decolonizing Ways of Knowing: Communion, Conversion and Conscientization," in Michael Peters and Tina Besley (eds.), *Paulo Freire: The Global Legacy*, (Counterpoints Series, Vol. 500), pp. 489-501 (New York: Peter Lang, 2015).

tremendously, as have the people of Africa. The complex identities that African people have forged as a result of multiple experiences, affiliations and multiculturalism would indeed render them "aliens" in pre-colonial contexts. On a daily basis, African people have to navigate their worlds through multiple, and often clashing, identities based on race, ethnicity, nationality, gender, religion, spirituality, sexual orientation, culture, food, education, profession, politics, dress, and so forth. All of us exercise agency and are able to navigate the dissonance that defines our conflicted selves with amazingly seamless ease. What is important is to sharpen our consciousness about Western coloniality and while it is impossible to reject everything Western *in toto*, we can certainly demand for the "socialization of power."[9] This would mean prioritizing global and local struggles over state-centric power structures in order to achieve collective forms of public authority. But is the African decolonization/decolonial project merely a mark of idealism?

Decolonization & Decoloniality: Science Fiction or Present Fact?

Shaking off the historically-extensive and deep legacies of colonialism is the toughest challenge that Africa will ever face. In the process of developing this book, I met a White American academic at a workshop in Nairobi. She asked what the book was about. "Decolonizing Africa," I responded. "Ah, you're writing science fiction," she quipped half-jokingly. Her response raises many hard and disturbing questions: Is decolonization/decoloniality a pipe dream, a fantasy? Are Africans capable of reclaiming their dignity and respect? Is a "Renaissance" realistically achievable? If it is, what would it take? If not, why not, and what would be the alternatives? The academic's quip was doubtlessly informed by the stereotypical and enduring image of Africa which is "seen as one large terrain of afflicted humanity, as a continent of mere humans without history, agency, or meaningful political

9. Aníbal Quijano, "Coloniality of Power, Ethnocentricism, and Latin America," *NEPANTLA* 1(3) (2000): 533-580.

or social life"[10]—the quintessential "dark" continent. Such images make it difficult for non-Africans, particularly Westerners, to imagine any kind of agency or action on the part of Africans, least of all reconstructing their existence outside the yoke of colonialism.

Most history texts depict Europe as the centre of the universe and the sole driver of the major civilizations of the world. Such history is further embellished with untruths about how, through colonialism, Europe exported civilization to relatively backward Africa. Far from being the insignificant backwater, the civilizations of Africa and Asia were unsurpassed. Just as history makes Europe the centre of the universe, so too does it make men its driving force. The histories of philosophy, science, the arts, law and so forth are firmly androcentric.[11] Their basic assumptions, epistemological and empirical bases perpetuate male dominance and injustice. Women have been "written out" of historical accounts and political memory. The consequences of such omissions, as chapter nine demonstrates regarding the history of Pan-Africanism, is to reinscribe male dominance in all fields of life.

The powerful grip that colonial Europe has on knowledge production totally distorted ancient African historiography by scrapping and/or suppressing its civilizations from dominant discourses. Accordingly, Africa had "no history" because it had no written documents to prove it.[12] Indeed, it is ludicrous and untenable for anyone to suggest that a people do not have history. When a people are constructed through a historical vacuum, it is easy to fill that vacuum with all kinds of negative comprehensions and interpretations. The real histories are "masked, faked,

10. Adam Branch, *Displacing Human Rights: War and Intervention in Northern Uganda* (Oxford: Oxford University Press, 2011) at p. 5. Also see Georg W. F. Hegel, *The Philosophy of History* (trans. J. Sibree) (New York: Dover Publications, 1967).

11. Mesembe Edet, "Women in the His-Story of Philosophy and the Imperative for a 'Her-Storical' Perspective in Contemporary African Philosophy," in Jonathan Chimakonam and Louise du Toit (eds.), *African Philosophy and the Epistemic Marginalization of Women*, pp. 155-166 (New York: Routledge, 2018); and Louise de Toit, "'Old Wives' Tales and Philosophical Delusions: On the Problem of Women and African Philosophy," *South African Journal of Philosophy* 27(4) (2008): 413-427.

12. Dani Wadada Nabudere, *Afrikology and Transdisciplinarity: A Restorative Epistemology*, (Pretoria: Africa Institute of South Africa, 2012) at p. 127. Also see Amadou-Mahtar M'Bow, "Preface" in Joseph Ki-Zerbo (ed.), *General History of Africa: Methodology and African Prehistory*, Vol. I (Oakland, CA: University of California Press, 1981).

distorted, mutilated."[13] Sadly, such histories are repeatedly fed to our children in African schools and extrapolated to rationalize the present and the future. The complex deep-rooted structures of our societies require a comprehensive understanding of our histories. As Joseph Ki-Zerbo eloquently puts it: "Unless one chooses to live in a state of unconsciousness and alienation, one cannot live without memory, or with a memory that belongs to someone else. And history is the memory of nations."[14]

In her book *Decolonizing Methodologies*, Māori scholar Linda Tuhiwai Smith urges us to "recentre" Indigenous ways of knowing and to decolonize methodologies derived from oral traditions.[15] Ki-Zerbo articulates the place of oral tradition in history as constituting "a real living museum, conserver and transmitter of the social and cultural creations stored up by peoples said to have no written records."[16] Moreover, ontological and epistemological frameworks that inform colonial practices of history measure time in a linear and progressive fashion, represented in seconds, minutes, hours, weeks, months, years, periods and eras. The historical chronometer in Africa continues to be measured from the "zero year" that references the birth of an alien Christ (BC and AD). This is the case despite the fact that most non-Western conceptions of time tend to differ; rather than being rigid and linear, they follow a spiral. Such a spiral "revolves through layers of generations, renewing itself with each new birth. It cannot be fixed but is constantly moving in three-dimensional, multilayered space. It allows for recurrence and return but also for transformation."[17] Traditionally, for example, Africans did not understand time as abstract chronological "periods" but rather, conceived them in more concrete terms of "events" or "seasons." In such worlds, everything

13. Joseph Ki-Zerbo, "General Introduction," in J. Ki-Zerbo (ed.), *General History of Africa*, Vol. I (Oakland, CA: University of California Press, 1981) at p. 2.

14. Ibid. at p.3.

15. Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (London: Zed Books, 1999).

16. Joseph Ki-Zerbo, "General Introduction," Note 13 at pp. 7-8.

17. Lisa Brooks, "The Primacy of the Present, the Primacy of Place: Navigating the Spiral of History in the Digital World," *PMLA* 127(2) (2012): 308-316 at p. 309. Also see Jack Goody, *The Theft of History* (New York: Cambridge University Press, 2006).

is connected and eternal.[18] A return to such conceptualizations lies at the core of how Africans re-educate themselves about their historiographies.

Apart from oral history, Africa also has written historical records that date back to the thirteenth century. The thousands of ancient manuscripts preserved in Timbuktu and its environs (present-day Mali), the Shabaka stone, recorded by the Nubian-Ethiopian pharaoh Shabaka and the "sub-Saharan" scripts such as Vai from Liberia, the Bamum collection from Cameroon and the N'ko alphabet from Guinea represent only a small slice of Africa's civilization legacy that was "disappeared" by colonialists.[19] In addition, archeological excavations and studies have revealed highly organized kingdoms flourishing all over the continent as far back as the fourth century, some of them ruled by women.[20] Many Afrocentric scholars have countered such Eurocentric arrogance and racist distortions by revealing Africa's rich prehistory.[21] Such distortions use the European Middle Ages as the primary yardstick and reference point for African modes of production, social relations and political institutions. As Amadou-Mahtar M'Bow correctly observes, "there was a refusal to see Africans as the creators of original cultures which flowered and survived over the centuries in patterns of their own making."[22]

The original place of modern humans was in East Africa about 3

18. Ibid.

19. See Shamil Jeppie and Souleymane Bachir Diagne (eds.), *The Meanings of Timbuktu* (Cape Town: HSRC Press, 2008) and Dani Wadada Nabudere, "Cheikh Anta Diop: The Social Sciences, Humanities, Physical and Natural Sciences and Transdisciplinarity," *International Journal of African Renaissance Studies* 2(1) (2007): 6-34.

20. See Basil Davidson, *Old Africa Rediscovered* (London: Gollancz, 1959); Jan Vasina, *Kingdoms of the Savanna* (Madison: University of Wisconsin Press, 1970); Joseph Ki-Zerbo (ed.), *General History of Africa*, Vol. I (Oakland, CA: University of California Press, 1981).

21. See e.g., The UNESCO Volumes 1-8, *History of Africa* (Oakland, CA: University of California Press); Valentin-Yves Mudimbe, *The Invention of Africa: Gnosis, Philosophy and the Order of Knowledge* (Indiana: Indiana University Press, 1988); Martin Bernal, *Black Athena: The Afro-Asiatic Roots of Classical Civilization* (Vols. 1-3) (London: Free Association Books, 1987, 1991, 2006); Dan Wadada Nabudere, *Afrikology and Transdisciplinarity: A Restorative Epistemology* (Pretoria: Africa Institute of South Africa, 2012).

22. Amadou-Mahtar M'Bow, "Preface" in Joseph Ki-Zerbo (ed.), *General History of Africa: Methodology and African Prehistory*, Vol. I (Oakland, CA: University of California Press, 1981) at p. xvii.

million years ago.[23] It was from here that brown-pigmented humans migrated to the rest of the world and "by differentiation in other climates that the original stock later split into different races."[24] Of course, the classification of races was introduced much later with the spread of imperialism. Naturally, in their northern-bound migration route, they followed the life-giving River Nile. The research and publications of the Senegalese scholar Cheikh Anta Diop on the origins of the human race were particularly instructive in recording this important part of Africa's historiography.[25] Indeed, as noted by Bethwell Ogot, Diop "wrested Egyptian Civilization from the Egyptologists and restored it to the mainstream of African history."[26] Gamal Mokhtar explains that "The Nile valley from Bahr el Ghazal in the south to the Mediterranean in the north holds a special place in the history of ancient Africa."[27] Given its geographical position, it became the terminal point for many travelers moving from inland Africa and the Middle East. Hence, the inhabitants of the valley who introduced civilization belonged to several human groupings.[28] And feminist Egyptologists have uncovered the fact that women in ancient Egypt enjoyed legal and economic equality with men and in many cases also wielded political power.[29]

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23. Yves Coppens, *Human Origins: The Story of our Species* (London: Hachette Illustrated, 2004).

24. Cheikh Anta Diop, "Origin of the Ancient Egyptians," in Gamal Mokhtar, *General History of Africa: Ancient Civilizations of Africa*, Vol. II, pp. 27-57 (California: Heinemann, 1981) at p. 27. Also see Cheikh Anta Diop, *The African Origin of Civilization: Myth and Reality*, Trans and ed. Mercer Cook (New York: Lawrence Hill Books, 1974).

25. Cheikh Anta Diop, *The African Origin of Civilization*, Note 24.

26. Bethwell A. Ogot, "African Historiography: From Colonial Historiography to UNESCO's General History of Africa," in Bethwell Ogot (ed.), *General History of Africa Vol. 5—Africa from the sixteenth to the Eighteenth Century*, pp. 71-80 (Oxford: Heinemann, 1992) at p. 72. Also see Ivan Van Sertima (ed.) 1986, Introduction, 7–16, in *The Great African Thinkers, Vol. 1: Cheikh Anta Diop* (New Brunswick and Oxford: Transaction Publishers, 1986).

27. Gamal Mokhtar (ed.), "Introduction," in Gamal Mokhtar, *General History of Africa: Ancient Civilizations of Africa*, Vol. II, pp. 1-26 (California: Heinemann, 1981) at p. 4.

28. Ibid. at p. 14. The question of the peopling of ancient Egypt has generated intense debate among historians, anthropologists, archeologists, geneticists and linguistics. E.g., see "Annex to Chapter 1: Report of the Symposium on 'The Peopling of Ancient Egypt and the Deciphering of the Meroitic Script'," (Cairo, 28 January to 3 February, 1974), reproduced in Gamal Mokhtar, *General History of Africa: Ancient Civilizations of Africa*, Vol. II (California: Heinemann, 1981), pp. 58-83.

29. See e.g., Averil Cameron and Amélie Kuhrt (eds.), *Images of Women in Antiquity* (London: Croom Helm, 1983); Sarah B. Pomeroy, *Women in Hellenistic Egypt* (Detroit:

Decolonization studies must trace African history from its Egypto-Nubian antiquity.[30] It is extremely important for Africa's decolonization/decolonial project that Europe's manipulation of history and the imperialist intellectual deceit is uncovered. Additionally, the pillage of African antiquities by colonialists and the ongoing illicit trade in the continent's artefacts present a huge gap in its prehistoric sociopolitical life. Deliberate steps must be taken to set the historical record straight for our children and to end the slavish parroting of the Africanist guru.[31] This is extremely important for the success of the project. Hence, far from being idealistic, the decolonization/decolonial project is in fact realizable, especially if approached from two different directions.

A Two-Pronged Approach: The Political and the Psychological

The colonization (and by logical extension, decolonization too) project can be divided into two pedagogical stages: colonialism and coloniality. The former lies in the realm of the experience while the latter is more conceptually oriented. Most of us are familiar with the first term; colonialism refers to the old-fashioned style of physical appropriation of Indigenous lands and people with a colonial administration to oversee their exploitation.[32] For example, Uganda was colonized by the British, Senegal by the French and Congo by the Belgians. Historically, these countries became decolonized when they obtained formal independence from the colonial powers. In Africa, such decolonization was largely achieved during the second half of the twentieth century through nationalist and Pan-African Movements. Moreover, direct political colonialism had become too costly and therefore unsustainable. Material

Wayne State University Press, 1984); Gay Robins, *Women in Ancient Egypt* (Cambridge: Harvard University Press, 1993); and Barbara Watterson, *Women in Ancient Egypt* (Oxford: John Wiley & Sons Ltd., 1998).

30. See W. Paul van Pelt, "Revising Egypto-Nubian Relations in New Kingdom Lower Nubia: From Egyptianization to Cultural Entanglement," *Cambridge Archeological Journal* 23(3) (2013): 523-50.

31. See Issa Shivji, *The Concept of Human Rights in Africa* (Dakar: CODESRIA, 1989).

32. Ramón Grosfoguel, "From Postcolonial Studies to Decolonial Studies: Decolonizing Postcolonial Studies: A Preface," *Review* 29 (2006): 141-143.

changes in Europe demanded a change of strategy. Hence, the grant of "independence" and inclusion of former colonies into the "community of nations" was essential to a new phase of the economic order. The economic structure that had required colonization had changed, necessitating "free trade" under the new so-called international economic order.[33] But the economic basis of colonialism remained unchanged; it was simply entering its second phase of neocolonialism. Hence, the second phase of politico-economic decolonization involves the politically independent states of Africa to free themselves from multilateral and global capital.

Coloniality, on the other hand, is a more indirect type of colonization but by no means less effective than the first. In a cognitive sense, it co-existed with colonialism and outlived it. Peruvian scholar Aníbal Quijano usefully developed this concept to explain the configurations of global hierarchical power relations and the dominance of Eurocentric knowledge systems.[34] For example, the fact that the Eurocentric perspective of knowledge is incapable of fully grasping the notion of a "third gender" which is known in most non-Western knowledge systems, can be explained through coloniality. If you, the reader, have just creased your brow, in wonderment, at the mention of "third gender," then you share the dominant taken-for-granted dualistic assumptions about the human sexes. Most of us are oriented by the Eurocentric dominant knowledge system to believe that there are two and only two sexes/genders and find it extremely odd for anyone to suggest otherwise. This is what Tlostanova and Mignolo describe as being "zombified" by the Western knowledge system.[35] That cognitive understanding, which makes you think that it is "unnatural" to have more than two sexes, is informed by coloniality. It is all part of the geopolitics of knowledge production and intellectual histories.

The process of colonization erased, suppressed and demonized

33. See Adom Getachew, *Worldmaking after Empire: The Rise and Fall of Self-Determination* (Princeton, NJ: Princeton University Press, 2019), pp. 142-175.

34. Eurocentred colonialism was replaced with Eurocentred coloniality. See Aníbal Quijano, "Coloniality and Modernity/Rationality," in Walter Mignolo and Arturo Escobar, *Globalization and the Decolonial Option*, pp. 22-32 (London: Routledge, 2013). Also see Aníbal Quijano, "Coloniality of Power," Note 9.

35. Madina Tlostanova and Walter Mignolo, *Learning to Unlearn: Decolonial Reflections from Eurasia and the Americas* (Columbus: Ohio State University Press, 2012) at p. 143.

all Indigenous non-Western knowledge systems. In particular, knowledges of women (e.g., alchemist wise women), of "peasants" and working classes, and of the "pagans" or earth-centred religion worshippers were all subjugated and criminalized. Conversely, the Eurocentric knowledge system was given place of honour and constructed as "natural" and universal. It was patriarchal, Christian-centric, sexist, heteronormative and positivist in nature.[36] This is part of a complex capitalist world system that operates through multiple hierarchical dimensions of social life (e.g., racial, gender, sexual, economic, political, family, knowledge structures). Quíjano urges us to think in terms of "coloniality of power" in order to understand that the structures and hegemonies that facilitated and reinforced colonialism did not disappear with flag independence. We should not view various hierarchical dimensions as separate systems of oppression, but as integrated (or entangled) heterogeneous structural processes. His conception is similar to the concept of intersectionality discussed in the next chapter. *Decolonial* liberation would, therefore, not just target the exploitative capitalist economic system but all systemic constructs and relations (based on race, sex, family, knowledge structures, able-ness, etc.). According to Quíjano, this arrangement is rationalized through the theory of modernity.[37] Indeed, coloniality and modernity lie on opposite sides of the same coin. [38] Coloniality reminds us on a daily basis that, in this "post-colonial" period, we still live under colonial conditions. For colonization to succeed, it was important for the colonialists to capture the minds of the colonized. Not only did they restructure the knowledge systems of

36. See Ramón Grosfoguel, "Decolonizing Post-Colonial Studies and Paradigms of Political Economy: Transmodernity, Decolonial Thinking, and Global Coloniality," *Journal of Peripheral Cultural Production of the Luso-Hispanic World* 1(1) (2011): 1–25.

37. As one of the two axes of global, Euro-centred capitalism (the other being 'coloniality of power'), Quijano views "modernity" as "the fusing of the experiences of colonialism and coloniality with the necessities of capitalism, creating a specific universe of intersubjective relations of domination under a Eurocentred hegemony." See Aníbal Quijano, "Colonialidad del Poder y Clasifcacion Social," *Journal of World Systems Research* 5(2) (2000): 342–388 at p. 343.

38. Ramón Grosfoguel, "Transmodernity, border thinking, and global coloniality: Decolonizing political economy and postcolonial studies," *Eurozine* (July 4, 2008), available at: https://pdfs.semanticscholar.org/3cd9/e91d8b2eee7fb96a820500eb314bf0c31b23.pdf [accessed Nov 14, 2019] at p. 8.

African people, but they also embarked on a mission to erase and/or devalue their history, culture, expressions and ways of being.

When we speak of *decolonization*, the process of "breaking free" must target both levels of colonization in order to be effective. The two remaining phases of decolonization must be pursued simultaneously to accelerate success. The agency of Africans must be guided by a consciousness that is crystal clear about what the problem is, namely one anchored in the continent's rich history and the ideals of feminism and African nationalism. Decolonization is a multifaceted, holistic and integral process that cannot be delinked from the very structures of knowledge that were implanted by the colonialists.[39] Employing both registers of political economy and critical theory below, I discuss the two-pronged approach in turn.

Politico-Economic Colonization

As noted earlier, the first phase of politico-economic colonization involved the expropriation of Indigenous worlds by imperial colonizers. This included the appropriation of Indigenous peoples and their ecologic alspaces for the benefit of imperialism. For Africa, the watershed of European colonization was marked with the capturing of the first African slaves who were taken to America in 1619. Through slavery, Africans were "Othered" as uncivilized inferior "savages."[40] After two centuries, the trade was officially abolished in 1807. Thereafter European imperialists turned to the plunder of Africa's land, people and resources. They moved in to pillage raw materials such as minerals, oil, rubber, ivory, cotton, cocoa, tea, groundnuts, etc., using cheap labour. Africa also opened up new markets for finished products from Europe. The scramble for Africa's land—marked by inter-imperialist wars and disputes—culminated in the 1884-5 Berlin Conference which

39. See Linda Tuhiwai Smith, *Decolonizing Methodologies*, Note 15; Madina Tlostanova and Walter Mignolo, *Learning to Unlearn*, Note 35; and Eve Tuck and Wayne Yang, "Decolonization is not a Metaphor," *Decolonization: Indigeneity, Education and Society* 1(1) (2012): 1-40.

40. Darrell Kafentse, "Imagining Home: Tracing the Bond between African Americans and Africa from 1619 to 1936," Dissertation, Georgia State University, 2015. Available at: https://scholarworks.gsu.edu/cgi/viewcontent.cgi?article=1050&context=history_diss [accessed Nov 14, 2019]

formalized imperial claims to African territory.[41] The continent was splintered into numerous unviable states with the aim of keeping them separated and divided. The northern part of the continent was ideologically and politically divorced from its southern region through the adoption of terms such as "sub-Saharan Africa."[42] The acquisition and conservation of colonies was key to the economic advancement of Europe. Just as the US derived its power from the slave economy, European countries derived theirs from colonial expansion. As Paul Leroy-Beaulieu remarked in 1882, the success of the colonial venture was "for France a question of life or death."[43]

After flag independence, the colonialists simply changed mechanisms and processes to maintain a stranglehold on the economically vulnerable newly-independent states. *De jure* trappings of independence only disguised *de facto* domination by imperialists. Former colonial powers maintained a web of exploitative post-independence links, agreements and pacts to keep the former colonies under lock and key. A good example of neocolonial control is the "Colonial Pact" that France forced thirteen of its former colonies in central and western Africa, plus Guinea Bissau, to sign as a condition for obtaining flag independence.[44] Guinea, under Sékou Touré, resisted this pact in 1958 and paid a huge price for doing so.[45] The Pact included a clause that required all fourteen countries to use a common currency (the CFA Franc), controlled directly from the French Central Bank in Paris. To date, the fourteen countries are obliged to deposit 50 percent of their foreign exchange reserves with the French treasury and another

41. G. N. Uzoigwe, "Reflections On the Berlin West Africa Conference, 1884-1885," *Journal of the Historical Society of Nigeria*, 12(3/4) (1984–1985): 9-22.

42. See Bethwell Ogot (ed.), *General History of Africa Vol. 5*, Note 26. Also see Ousmane Ouma Kane, *Beyond Timbuktu: An Intellectual History of Muslim West Africa* (Cambridge: Harvard University Press, 2016) at p. 22. Hegel used the term, "Africa proper" in reference to sub-Saharan Africa, claiming that it had no history. See G.W.F. Hegel, *Introduction to the Philosophy of History*, (Indianapolis & Cambridge: Hackett Publishing Company, 1998).

43. Cited in J. P. Daughton, *An Empire Divided: Religion, Republicanism, and the Making of French Colonialism, 1880-1914* (Oxford: Oxford University Press, 2006) at p. 10.

44. See Ndongo Samba Sylla and Fanny Pigeaud, *Françafrique's Invisible Weapon*, a *History of the CFA Franc* (Paris: La Découverte, 2018).

45. See World Bulletin, "French Colonial Tax Still Enforced in Africa," October 14, 2015, available at: https://www.worldbulletin.net/africa/french-colonial-tax-still-enforce-for-africa-h152967.html [accessed Nov. 13, 2019].

20 percent to address financial liabilities.[46] This means that after paying this "colonial tax" these African countries have access to only 30 percent of their own money for national development. They do not have an independent monetary policy as all decisions pertaining to such affairs are made in Paris. The French treasury invests the money that it collects from its former African colonies for its own enrichment.[47] It is the same money that the former colonies receive back as loans at commercial interest rates! It is estimated that France receives approximately USD 500 billion annually from this colonial tax, which yields trillions after being invested on the stock market.[48] French leaders are acutely aware of their critical dependence on Africa. Former President Jacques Chirac admitted back in 2008, "Without Africa, France will slide down into the rank of a third [World] power" and, before him, his predecessor François Mitterrand had prophesied in 1957 that: "Without Africa, France will have no history in the 21st century."[49]

Furthermore, the Pact demands that the French have priority in buying any natural resources found in the land of the fourteen countries. No room for bargaining for the highest bidder on the part of the African states. Similarly, the Pact obliges all fourteen countries to prioritize the award of government contracts to French companies. The *New African* magazine reported in 2011 that when Côte d'Ivoire wished to construct its third major bridge, as per the Colonial Pact, the contract went to a French company that quoted an exorbitant fee. Then President Laurent Gbagbo—a history professor known to challenge the Colonial Pact—offered the contract to Chinese investors whose quotation was half of the French one.[50] Well, we all know that not long afterwards, Gbagbo

46. William Gumude, "Africa's Uncompetitive Trade Deals," *World Commerce Review* 9(4) (December 2015), available at: https://www.worldcommercereview.com/publications/article_pdf/1019 [accessed Dec 12, 2019].

47. See Mamadou Koulibaly, *Les Servitudes du Pacte Colonial* (*The Servitude of the Colonial Pact*), (Abidjan: CEDA/NEI, 2005). Also see Munyaradzi Mawere and Tapuwa Mubaya (eds.), *African Studies in the Academy: The Cornucopia of Theory, Praxis and Transformation in Africa*, (Mankon, Bamenda: Langaa RPCIG, 2017), available at: www.jstor.org/stable/j.ctvh9vv87; and Jean-Paul Sartre, "Colonialism is a System," *Interventions* 3(1) (2001): 127-140.

48. World Bulletin, "French Colonial Tax Still Enforced in Africa," Note 45.

49. Ibid.

50. Tom Mbakwe, "Cote d'Ivoire: The Story Behind the Story," *New African*, February 2011 at p. 13.

was militarily dislodged and replaced with the French-supported Alassane Ouattara.[51] This demonstrates how negative stereotypes are perpetuated about Africa. What the Western media reported as an election dispute, with France as the "neutral arbiter," turns out to be a much deeper crisis that threatened the geo-strategic and economic interests of the former colonial master.

So that is how France maintains an extractive zone on the continent through the CFA Franc monetary system. The former colonies are obliged to send an annual balance and reserve report to France.[52] Failure to do so would disqualify them from receiving any money. The Defence Agreements attached to the Colonial Pact also give Paris the right to intervene militarily in any of the fourteen countries and station troops permanently in French-run military facilities as they did recently in Chad and Mali.[53] Hence, most Francophone African leaders succumb to what Lecomte terms "voluntary servitude" whereby such political leaders accept to maintain an extractive trans-national economic institution as an expression of the lack of political legitimacy.[54] Extractive economic systems translate into undemocratic extractive political institutions.

In December 2019 Côte d'Ivoire and France jointly announced that the CFA monetary system in West Africa was being replaced with a "new" Eco monetary system. Economists have dismissed the reforms as "cosmetic" since the Eco remains pegged to the Euro and the "new" monetary cooperation agreement with France maintains the old neocolonial links.[55]

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51. Ibid.

52. Ernest Lecomte, "Power Relations Between States and Trans-National Economic Institutions: A Case Study of the CFA Franc," Bachelor Thesis (Lund University, 2017) available at: http://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=8909627&fileOId=8913329 [accessed April 30, 2019)

53. Ibid. at p. 20.

54. Ibid.

55. See Laura Angela Bagnetto, "End of CFA Franc in West Africa only a 'Symbolic Change': Economist," RFI (December 22, 2019), available at http://www.rfi.fr/en/africa/20191222-end-cfa-franc-west-africa-only-symbolic-change-economist [accessed December 23, 2019]. The Dakar-based economist and co-author of the book, *Françafrique's Invisible Weapon: Story of the CFA Franc,* Ndongo Samba Sylla told RFI, "As an economist, for me, the CFA franc is more than a symbol of the monetary system, which is designed to organize African countries in a way that treats the interest of French businesses, French government and more generally European businesses."

Since formal independence, several African countries have also entered into what can only be described as "eco-colonial" pacts that involve multinational corporations taking over huge tracts of land for so-called developmental projects. Such agreements involve mining or converting forestland into plantations of sugarcane, tea, etc., processes that have led to the transformation of the environment and social livelihoods around the continent. The decolonization project should integrate an analysis of the ecological dimensions of neocolonialism. In Chapter Three we discuss traditional ecofeminist ecologies as one approach to sustainable human livelihoods that will also guarantee environmental health and justice.

Hence, while direct colonization symbolically ended with flag independence in the latter half of the twentieth century for Africa, the exploitation, oppression and violence of imperialism continues.[56] Jamaican scholar Sylvia Wynter described this phenomenon as achieving "map emancipation" without "territorial emancipation."[57] Leonhard Praeg reiterates that "When colonial powers left Africa, they did not leave behind viable independent economies and coherent political forms, for the simple reason that neither of these things were ever colonialist intentions."[58]

The end of formal colonialism triggered the start of neocolonialism. Neo-colonialism is a reality and while different states acquired flag independence and national anthems, the political, economic and legal structures existing today are still entrenched in the colonial past. New strategies to maintain colonial power over "independent" Africa are in many ways more dangerous because the "colonizers" are not accountable for their exploitative pursuits.[59]

Today, Africa is indirectly dominated by institutions such as the

56. But we should not forget that in some places, settler colonialism is still alive and well. For example, in the US, Canada, Australia and South Africa.

57. Sylvia Wynter, "On How We Mistook the Map for Our Territory, and Re-Imprisoned Ourselves in Our Unbearable Wrongness of Being, of Desire." in Lewis R. Gordon and Jane Anna Gordon (eds.), *Not Only the Master's Tools: African-American Studies in Theory and Practice* (Boulder: Paradigm Publishers, 2006) at p. 118.

58. Leonhard Praeg, *A Report on Ubuntu* (Pietermaritzburg, University of KwaZulu-Natal Press, 2014) at p. 136.

59. See L. Goncharov, "New Forms of Colonialism in Africa," *The Journal of Modern African Studies* 1(4) (1963): 467-474 at p. 468.

World Bank, the International Monetary Fund (IMF), the World Trade Organization (WTO) and multinational corporations which run the neocolonial machinery and wield significant power on the global landscape. The capitalist-patriarchal system, facilitated by Western nation states, continues to extract from ex-colonies to feed the insatiable appetites of colonial powers. Colonized lands continue to supply cheap labour, minerals, oil, sand, cash and food crops, fish, etc. for the benefit of both capitalism and colonialism. The "post-colonial" subjects continue to suffer and their environment continues to be depleted under the hands of imperialists and their agents on the ground—the Indigenous "comprador" elites. So, slavery, direct colonization and neocolonialism together represent the first level of colonialism, whose structural legacies shape our political economies. Decolonization calls for a dismantling of the capitalist neoliberal system. Hence, the transformation of Africa's economies and state political structures constitute a different, albeit closely linked, form of decolonization from that addressed at the second level.

Psychological Colonization

The second level of coloniality was (and still is) much more insidious and dangerous. It operates in subtle and "benign" ways derived from the warped understanding of Africa's historiography. Its ideologies are inculcated through institutions such as education, religion, laws, family, language, corrupted cultural practices and mass media (print, broadcast, social). It involves the colonization of the mind, patterns of knowledge and social structures of Indigenous peoples. Intellectually, Africa was oriented towards a Eurocentric worldview in terms of values, aesthetics and basic philosophical outlook. Conversely, the Afrocentric worldview was devalourized. Ngugi wa Thiong'o summed it up poignantly: "Berlin of 1884 was effected through the sword and the bullet. But the night of the sword and the bullet was followed by the morning of the chalk and blackboard."[60] Numerous scholars from the global South share the same sentiments. Aníbal Quijano, for instance, makes the same

60. Ngugi wa Thiong'o, *Decolonising the Mind: The Politics of Language in African Literature* (London: James Currey, 1986) at p. 9.

argument differently. He argues that after political colonization had been eliminated, Western imperialism continued to subordinate, not only non-Western cultures to the European but also the colonization of those cultures. He writes: "This relationship consists, in the first place, of a colonization of the imagination of the dominated; that is, it acts in the interior of that imagination, in a sense, it is part of it."[61] Similarly, comparing it to the historical genocide of native Americans by Europeans, Ndumiso Dladla describes European attempts to annihilate African knowledge systems as "epistemicide."[62]

Decolonial and critical race theorists Tlostanova and Mignolo argue that the starting point of learning to unlearn the colonial ways is by delinking from the principles and structures that sustain colonial knowledge systems.[63] In order to meaningfully reconstruct the continent, Africa needs to cease listening to the noises of hegemonic Western knowledges and ways of being, which only work to negate, undermine and delegitimize Indigenous knowledge systems. Our sense of history should be delinked from that of the empire to allow us delve further into Africa's past, beyond the skewed periodization of "pre-colonial," "colonial" and "post-colonial." Why is the term "traditional" always used in combination with "culture" and never coupled with the word "civilization"? The geopolitics of knowledge require us to interrogate the macro-narratives that support the imposition of Eurocentric knowledge.[64] Walter Mignolo reminds us that "The expansion of Western capitalism implied the expansion of Western epistemology in all its ramifications, from the instrumental reason that went along with capitalism and the industrial revolution, to the theories of the state, to the criticism of both capitalism and the state."[65]

Such appropriation of the world by imperialists and their

61. Aníbal Quijano, "Coloniality and Modernity/Rationality," Note 34 at p. 23.

62. Ndumiso Dladla, "Towards an African Critical Philosophy of Race: Ubuntu as a Philo-Praxis of Liberation," *Filosofia Theoretica: Journal of African Philosophy, Culture and Religions* 6(1) (2017): 39-68 at p. 45.

63. Madina Tlostanova and Walter Mignolo, *Learning to Unlearn*, Note 35 at p. 32.

64. Enrique Dussel and E. Ibarra-Colado, "Globalization, Organization and the Ethics of Liberation," *Organization* 13(4) (2006): 489-508.

65. Walter Mignolo, "The Geopolitics of Knowledge and the Colonial Difference," *The South Atlantic Quarterly* 101(1) (2002): 57-96 at p. 59.

collaborators is best explained by Antonio Gramsci's theory of hegemony. Hegemony basically denotes our voluntary acceptance of ideologies.[66] It also illustrates how systems of power are constructed through knowledge, or, as Gwyn Williams argues, through creating "an order in which a certain way of life and thought is dominant, in which one concept of reality is diffused throughout society in all its institutional and private manifestations, informing with its spirit all taste, morality, customs, religious and political principles, and all social relations, particularly in their intellectual and moral connotation."[67]

Hence, imperialism maintained relations of domination through laws, education, religion, popular culture (e.g., media, art, clothing, advertising, books, movies) and so forth. Furthermore, through the triple mechanisms of globalization, naturalization and rationalization, colonialists established a Eurocentric worldview in Africa.[68] This form of psychological colonization renders the identity of the colonized a very precarious unity. Internalized colonization is so deeply embedded and our contexts so enlivened with colonial logic that our intuitive responses to change are usually negative. It blurs our vision and restricts our potential to imagine a different world—a world where everything Western is deemed to be inherently superior to anything Indigenous.

Systems of colonization and imperialism effectively disrupted African civilizations and progress. Today, they are so deeply entrenched in global structures, spaces and ways of thinking that pathways to decolonization often seem wretched and tortuous. This is especially so when you consider that coloniality lies at the core of all the –isms and schisms that plague humanity. But before tackling the political and economic pathways of decolonization, we must tackle the cultural one. Sylvia Wynter, writes about the intersecting coloniality of being, of power, of truth and of freedom.[69] She urges

66. Antonio Gramsci, *Selections from the Prison Notebooks* (Quintin Hoare & Geoffrey Nowell Smith, eds.), (London: Lawrence &Wishart, 1971) at pp. 57-58.

67. Gwyn A. Williams, "The Concept of 'Egemonia' in the Thought of Antonio Gramsci: Some Notes on Interpretation," *Journal of the History of Ideas* 21(4) (1960): 586-599 at p. 587.

68. See Douglas Litowitz, "Gramsci, Hegemony, and the Law," *Brigham Young University Law Review* 2000 (2) (2000): 515-552.

69. Sylvia Wynter, "Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards

people of African descent to unsettle these intersecting colonialities by reconceptualizing our very humanity. The complex process of disentangling and destabilizing coloniality, depriving it of all its lifelines, begins with shifting our mindsets.

Coloniality thrives on the racist conception of Othering. Indian feminist theorist Gayatri Spivak explained that the process of Othering was very important for the success of the imperialists in their colonizing mission.[70] The colonizer's definition of "self" had to be juxtaposed with an inferior stigmatized "Other" in order to justify and rationalize their imperialist mission. They used pseudo-science to construct the concept of race which over-valourized Whites and de-valourized Blacks. A hierarchized conception of race facilitated Europeans' understanding of "themselves" as superior to the different racial Other. It also naturalized and legitimized colonial relations.[71]

Quijano argues that "the idea of race" constituted "the most efficient instrument of social domination" ever invented.[72] With such understanding, colonization was projected to the world as a civilizing mission to "benefit" inferior races. Indeed, Africa was shaped by a racist colonial imagination. That said, it must be noted that, internally, Africa's encounter with Whiteness is not always the most relevant power dynamic at play. As noted in the introduction, it is impossible to analyze race outside of gender.[73] Lugones, Gayatri, Wynter and other post-colonial scholars are convinced that until we shift to a place where we do not need *Other* in order to understand *Self,* the anchor of coloniality will remain. In short, the project of decolonization must begin by rupturing internalized

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the Human, After Man, Its Overrepresentation—An Argument," *The New Centennial Review* 3(3) (2003): 257-337.

70. Gayatri Spivak, "The Rani of Sirmur: An Essay in Reading the Archives" *History and Theory* 24(3) (1985): 247-272.

71. See Aníbal Quijano, "Coloniality of Power," Note 9 at p. 533.

72. Aníbal Quijano, "Quétal Raza!" Paper prepared for the Conference of Coloniality Working Group at SUNY-Binghamton (2000) Cited in Sylvia Wynter, "Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards the Human, After Man, Its Overrepresentation—An Argument," *The New Centennial Review* 3(3) (2003): 257-337 at p. 263.

73. Furthermore, how do we account for people like the Amazigh (Berber) who may not be positioned in the race discourse in the same way but are absolutely African?

racism and sexism through the decolonization of the mind.[74] This is precisely what African feminists have been working hard to do in the last six decades. A great example is Pumla Dineo Gqola's *What is Slavery to Me?*, a book that draws on Afro-feminist, post-colonial and memory studies to examine the relevance and effect of Indian Ocean slavery memories to contemporary South African gendered and racialized identities.[75] Such creative frameworks of inquiry outside the dominant ways of knowing are critical to Africa's decolonial project.

74. See Ngugi wa Thiong'o, *Decolonising the Mind*, Note 60.

75. Pumla Dineo Gqola, *What is Slavery to Me? Postcolonial/Slave Memory in Post-Apartheid South Africa* (Johannesburg: Wits University Press, 2010).

3

Feminists and the Struggle for Africa's Decolonial Reconstruction

There is no such thing as a single-issue struggle because we do not lead single-issue lives.
— Audre Lorde[1]

African feminisms have always stood between the hard rock of Western influence and domination and African relativism and disparagement. There is consequently a need to move into the next phase of Afro-feminist activism by getting rid of those parts of Western feminism that were uncritically adopted and to reconceptualize the struggle for more meaningful and contextually relevant ways of addressing the marginalization of women. While patriarchies everywhere stem from the same roots of male power, and whereas there are some overlaps in the way women experience oppression globally, the preoccupations and priorities of African feminists cannot be similar to those of orthodox Western feminists. This is not only because race is a deeply constitutive element of gender, but also for the reason that the African continent occupies a

1. Audre Lorde, *Sister Outsider: Essays and Speeches* (Trumansburg, NY: Crossing Press, 1984) at p. 183.

separate cultural, social, economic and geopolitical landscape from the West. Moreover, the enduring legacies of slavery, colonialism and imperialism continue to slip through, intersect with patriarchal domination and come out on the other end as subjugation with different strands from those found in Western paradigms.

As Africans, our colonial education systems largely delimited our thinking to Western theorizations of ourselves and our environments. Right from the nursery rhymes through to the philosophical and literary classics, to the mediums of formal instruction, we are oriented to apply alien concepts. "Modern" colonial education deliberately avoided honing the creativity and problem-solving skills of the colonials. Worse still, it reinforced racist and sexist stereotypes about the superiority of Western nations and patriarchal conventions of male dominance. Neocolonial powers ensured that the status quo remained intact well after the attainment of flag-independence. It is time to change that, to remove the scales from our eyes and focus on pathways that re-centre Africa and its people.

Paradigms that are founded on polarized dualisms such as male versus female, husband versus wife, public versus private and so forth only heighten adversarial camps. And yet, African women have to collaborate with men in fighting off economic subjugation. This calls for fresh transformative feminisms on the continent. As John Marah notes, "transformational feminism reconstructs the traditional barriers between men and women, femininity and masculinity; it is eclectic and recognizes the integrality of humanity; it also critically examines the grey areas between what is masculine and what is feminine, economically, socially, and even sexually."[2] Equally, the decolonial drive must recognize the integrality of race, gender, class and other oppressions.

African women started challenging colonialism alongside their male counterparts from the outset. Imperialism dealt a double blow to women. First of all, women suffered as Africans who had been robbed of their resources, freedoms and pride, but also as people whose status had sharply regressed with colonialism.[3] Through

2. See John Marah, "Ayaan Hirsi Ali and Transformative Feminism in Africa," *International Journal of Liberal Arts and Social Sciences* 1(4) (2013): 31-36.

3. See Oyeronke Oyewumi, *The invention of women: Making African Sense of Western*

various feminist struggles, ranging from boycotts and protests to armed rebellion, to intellectual awakening, African women have resisted the empire in all its forms.[4] Unfortunately, the tendency is not to conceive of such struggles as feminist. As Ella Shohat remarks:

> Within standard feminist historiography… "third-world women's" involvement in anticolonialist struggles has not been perceived as relevant for feminism. Since the anticolonialist struggles of colonized women were not explicitly labeled "feminist," they have not been "read" as linked or as relevant to feminist studies… Yet, the participation of colonized women in anticolonialist and antiracist movements did often lead to a political engagement with feminism. However, these antipatriarchal and even, at times, antiheterosexist subversions within anticolonial struggles remain marginal to the global feminist canon.[5]

In Africa, women's struggles against oppression predate colonialism. There is a long history of women mobilizing in creative ways to resist patriarchal and political domination, asserting their personal and collective rights.[6] Several legendary women helped transform their societies even before colonizers stepped foot on their soil; examples include Queen Eyleuka (Dalukah) of Ethiopia, Queen Lobamba of Kuba (Congo), Princess Nang'oma of Bululi (Uganda), Queen Rangita of Madagascar, Queen Nzinga of Angola and Queen Nyabingi (northern Tanzania & western Uganda).

But the term "feminism" itself is not without controversy; while traditionalists tarnish it with the brush of "aping the West," it has also been rejected by some African scholars and activists because of its Western origins and the exclusion of non-Whites from its

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Discourses (Minneapolis: University of Minnesota Press, 1997); and Ester Boserup, *Women's Role in Economic Development* (London: George Allen & Unwin, 1970).

4. See e.g., Nina Mba, *Women's Political Struggle in Nigeria-Nigerian Women Mobilized: Women's Political Activity in Southern Nigeria, 1900–1965* (Berkeley: University of California, Berkeley, Institute of International Studies, 1982).

5. Ella Shohat, "Area Studies, Tansnationalism, and the Feminist Production of Knowledge," *Signs* 26(4) (2001): 1269-72 at pp. 1269-70.

6. See e.g., Mary Kolawole, Womanism and African Consciousness (Trenton, NJ): Africa World Press, 1997); Van Allen, Judith, "Aba Riot or Igbo Women's War? Ideology, Stratification, and the Invisibility of Women," in Nancy Hafkin and Edna Bay (ed.), *Women in Africa: Studies in Social and Economic Change*, pp. 59-85 (Stanford, CA: Stanford University Press, 1976).

theoretical frameworks. Alternative Indigenous variants, rooted in African histories and cultures, have been devised to connote Afro-Feminism including womanism,[7] stiwanism,[8] motherism,[9] femalism[10] and nego-feminism.[11] These frameworks have themselves been variously criticized for their heteronormativity, exclusions, contradictions and ambivalences which "signify a difficulty in proposing a single theoretical framework for a multiplicity of peoples with varied cultures and histories."[12]

Regardless of their imperfections, the loud message that rings from all these alternative theorizations is that: if African women are to successfully challenge their subordination and oppression, they need to carefully and rigourously develop home-grown conceptualizations that capture the specific political-economies and cultural realities encountered, as well as their traditional worldviews. It reminds us that, given the history of the continent and the lingering legacies of colonialism, imperialism, racism and neoliberalism, theories and paradigms formulated in the West do

7. Chikwenye O. Ogunyemi, "Womanism: The Dynamics of the Contemporary Black Female Novel in English," *Signs* 11(1) (1985): 63-80. Womanism espouses family-centred (as opposed to female-centred) feminism as an expression of Black culture and tradition and brings awareness to intersectional oppressions based on gender, ethnicity and poverty. It should be noted, however, that earlier in 1982, Alice Walker had referred to "womanism" in her novel *The Color Purple* to bring attention to the intersecting oppressive systems of gender and race. Ogunyemi also draws attention to the differences between Black culture and tradition within womanism. See Chikwenye Ogunyemi, *Africa Wo/man Palava: The Nigerian Novel by Women* (Chicago: University of Chicago Press, 1996).

8. Molara Ogundipe-Leslie, *Re-creating Ourselves: African Women & Critical Transformations* (Trenton, NJ: Africa World Press, 1994). Stiwanism is derived from the acronym of "'Social Transformation Including Women of Africa." The aim was to describe a transformative movement for African women that does not alienate men.

9. Catherine Acholonu, *Motherism: The Afrocentric Alternative to Feminism* (Owerri: Afa Publications, 1995). Motherism, like its name suggests, centres African women's motherhood as the core basis for the organization of women's solidarity. Instead of patriarchy and matriarchy, Acholonu prefers patrifocality and matrifocality, respectively to highlight the complementarity between African men and women.

10. Chioma Opara, "On the African Concept of Transcendence: Conflating Nature, Nurture and Creativity," *International Journal of Philosophy and Religion* 21(2) (2005): 189-200. In this variant, Opara focuses on African women's bodies, particularly their reproductive organs, as the agents of empowerment.

11. Obioma Nnaemeka, "Nego-feminism: Theorizing, Practicing and Pruning Africa's Way," *Signs/* 29(2) (2003): 357-385. The prefix "Nego" connotes the Afro variation of feminisms, which foregrounds negotiation, compromise, with "no ego." p. 377.

12. See Naomi Nkealah, "(West) African Feminisms and their Challenges," *Journal of Literary Studies* 32(2) (2016): 61-74 at p. 61; and Simidele Dosekun, "African Feminisms," in Olajumoke Yacob-Haliso and Toyin Falola (eds.), *The Palgrave Handbook of African Women's Studies*, pp. 1-17 (New York: Palgrave Macmillan, 2019).

not necessarily apply in Africa. It also underscores the need to develop alternative schools of thought and counter-hegemonic narratives that expose the subtle and intricate power relationships embedded in mainstream theories.

This chapter focuses on some attempts taken by African feminist scholars to theorize the connections and interdependent relations between oppressive institutions and gender hierarchies. In the first instance, the chapter sketches a mapping and review of institutional spaces where feminist thinking takes place on the continent. Next, it addresses the important issue of how multiple social categories impact on the oppression experience of different women in Africa. Finally, it tackles the links between the capitalist-patriarchal exploitation of women and of nature through an examination of ecological feminist efforts rooted in African Indigenous philosophies. Underscoring the analysis is an understanding that the post-colonial university makes for an awkward, if not hostile, home for feminist work. Chapter seven of this book deals with the politics of the African academy in more detail, but here we focus on a field of studies within the academy that seeks to place African women at the centre of theoretical discourse, diversify knowledge and challenge dominant ideologies.

Gender Studies in African Academies

As the primary locus of knowledge production, the university is an important part of transformational change. And as Amina Mama reminds us, "Conscientisation is a dynamic dialectical relationship between radical thinking and action… Feminist writing and publishing is a key route to conscientisation."[13] We all know that the modern university as an institution is a product of Western traditional culture and intellectualism. This means that its practices, orientation, philosophical and pedagogical models are all geared towards Western values. African feminist academic thinking mostly takes place in universities and activist spaces. Indeed, from the 1980s, interventions by African feminists

13. Amina Mama, "The Power of Feminist Pan-African Intellect," *Feminist Africa* 22 (2017): 1-15, at p. 1.

(alongside those of leftist political economists) challenging knowledge production and pedagogy within universities, were the inaugural decolonial projects on the continent. The problem is that there are not quite enough women, let alone feminists, who teach at the university level.

Gender disparities and inequalities in African universities are well documented. Despite efforts to implement sex-based affirmative action policies to improve the situation in countries like Ethiopia, Mozambique, Malawi, Tanzania, Zimbabwe and Uganda, female enrolment remains rather low across the board.[14] Similarly, not only are females in the academic labour market across the continent still relatively few, but the few who are there tend to cluster in the bottom academic ranks.[15] The gender profile of the African academy mirrors the situation in the larger society. While women slightly outnumber men on the African continent, their socioeconomic and political statuses are generally low relative to those of men. Moreover, the oppression of African women intersects with other forms of structural oppression (based on race, ethnicity, class, religion, disability, sexual orientation, etc.) to compound their injustices. But social transformation does not simply happen. It always involves long-term processes, including systematic inquiries into what the problem is, how it came about, how it is sustained and what needs to be done to engender change. All this requires various aspects of knowledge production that inform the praxis of social movements. Currently, African academies largely remain consumers of knowledge produced in the global North. The decolonization and decolonial alternatives would require conscious efforts by Africans to become producers of knowledge.

As a transdisciplinary field, Gender and Women's Studies (GWS) should ideally be mainstreamed in all university disciplines. However, in African universities, where it exists, it is usually

14. See Damtew Teferra and Philip Altbach, "Trends and Perspectives in African Higher Education," in Damtew Teferra and Philip Altbach (eds.), *African Higher Education: An International Reference Handbook*, pp. 3-14 (Bloomington: Indiana University Press, 2003) at p. 9.

15. Godwin Murunga, "African Women in the Academy and Beyond: Review Essay," in Oyeronke Oyewumi (ed.), *African Gender Studies: A Reader,* pp. 397-416 (New York: Palgrave Macmillan, 2005).

relegated to the feminized "ghetto" of the social sciences and/or humanities. For instance, when the department of Women and Gender Studies was established at Makerere University in 1991, it was under the Faculty of Social Sciences.[16] However, some feminists have a legitimate fear that an integrationist approach to GWS may lead to its being watered down or manipulated.[17] Amina Mama laments that GWS in Africa remains "a separate field of endeavor largely undertaken by women, which is tolerated but ignored, while the so-called 'core business' of male-dominated teaching and research proceed uncontested in its incompleteness."[18]

Engagement with GWS also happens at a few sites outside the university, including research institutes, international and governmental agencies and non-governmental organizations (NGOs). In the latter categories are Pan-African organizations such as the Dakar-based Association of African Women for Research and Development (AAWORD), the Nairobi-based African Women's Development and Communication Network (FEMNET) and the Ibadan-based Women's Research and Documentation Centre (WORDOC). Additionally, for African feminist movements to achieve the most effective results, it is critical that GWS intellectualism informs, and in turn be informed by, feminist activism outside the academy. After all, the majority of African women "theorize from the everyday."[19] Unfortunately, such synergetic engagements are not always evident between the two platforms. To address this challenge, the African Feminist Forum (AFF) was established as a regional platform for academics and non-academic African feminists to engage and produce knowledge.

16. Victoria Mwaka, "Women Studies in Uganda," *Women's Studies Quarterly* 24(1/2) (1996): 449-464 at p. 457.

17. Josephine Ahikire, "Locating Gender Studies in the Pan-African Ideal: A Reflection on Progress and Possibilities in Uganda," in Signe Arnfred, Amanda Gouws and Babere Chacha (eds.), *Gender Activism and Studies in Africa*, Gender Series 3, pp. 54-65 (Dakar, Senegal: CODESRIA, 2004). Also see Joy Kwesiga, "Theory and Practice for Gender Equity in Africa: The Critical Future Role of the Academic Arm of the Women's Movement," Keynote paper presented at a conference on Gendering the Millennium, University of Dundee, Scotland, September 11-13, 1998.

18. Amina Mama, "Restore, Reform, but do not Transform: The Gender Politics of Higher Education in Africa," *Journal of Higher Education in Africa* 1(1) (2003): 101–125 at p. 118.

19. Pumla Gqola, "Ufanele Uqavile: Black Women, Feminisms and Postcoloniality in Africa," *Agenda*, 16(50) (2001): 11–22. Also see Charmaine Pereira, "Between Knowing and Imagining: What Space for Feminism in Scholarship on Africa?" *Feminist Africa* 1 (2002): 9-33.

Meeting biennially, this political platform acts as a springboard for action. Such action takes various forms, including: critical reflections on the continental crises and the Afro-feminist agenda; collective self-critique and self-care; creative and subversive methodologies; and developing new initiatives for African women.[20] Such initiatives help to consolidate continental transnational collaboration in research, teaching and activism.[21] Networking through e-spaces has made such partnerships easier to manage.

African feminists are keenly aware of the political economy of knowledge production. What we read in mainstream literature, whether history, law, science, religion or culture, largely reflects the Eurocentric male view of the world. Such biases of knowledge exist despite claims of objective, value-free research.[22] Indeed, the ghettoization of Gender and Women Studies is emblematic of how hegemonic knowledge is produced, by whom, for whom and with what funding. Part of the African decolonization/decolonial project seeks to centre African people in academic research, taking into account the key differentials based on gender and other intersecting parameters. Despite the strides made by feminist scholars, many in mainstream academia, even today, are yet to be convinced that feminist methodologies, approaches and analyses in research are part of legitimate scientific inquiry.[23] Until feminist analyses are mainstreamed into knowledge production and into "malestream" scholarship, GWS will continue to carry the large and weighty burden of filling the gaps in our knowledge base about women and gender relations.[24]

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20. See Jessica Horn, "Feeding Freedom's Hunger: Reflections on the Second African Feminist Forum," *Feminist Africa* 11 (2008): 121-126. To learn more about AFF see its reports at: http://www.africanfeministforum.com/category/resources/african-feminist-forum/ [accessed Nov 11, 2019].

21. See Jane Bennett, "'Disappearance' and Feminist Research in the South African Academy of Humanities," *Arts & Humanities in Higher Education* 15(1) (2016): 94-106; and Akosua Adomako Ampofo, Josephine Beoku-Betts and Mary Osirim, "Researching African Women and Gender Studies: New Social Science Perspectives," *African and Asian Studies* 7 (2008): 327-341.

22. See Ayesha Imam, Amina Mama and Fatou Sow (eds.), *Engendering the Social Sciences in the African Context* (Dakar, Senegal: CODESRIA, 2000).

23. Ayesha Imam, "Engendering African Social Sciences: An Introductory Essay," in Ayesha Imam *et al.*, (eds.), *Engendering African Social Sciences*, Ibid. pp.1-30.

24. Josephine Ahikire, "Locating Gender Studies in the Pan-African Ideal," Note 17. Also

A sustained interest in researching African women was recognizable starting in the 1970s. Most of this scholarship was conducted by scholars from the global North, particularly in the fields of social anthropology and economic development.[25] While such studies were extremely important in filling the knowledge gap regarding the roles of African women and spotlighting their subordination, most of them uncritically transplanted Western hegemonic methodologies and biases to their continental investigations. Most viewed African women through the essentialist prisms of victimization and/or objectification of the exotic "Other." As Mary Kalawole reiterates, African women were treated "as an outgroup to be spoken for by a mainstream ingroup."[26] The capitalist-liberal master narrative that dominated patriarchal research was now matched by the "mistress" narratives of Anglo-American feminism. All were universalistic and colonial.

This was, in part, what triggered the scholarship by African feminist scholars who were trying to challenge some of the analytic shortcomings they encountered in mainstream Western feminist scholarship.[27] They sought to recontextualize and rearticulate issues concerning African women, highlighting the ontological and

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see Charmaine Pereira, "Between Knowing and Imagining: What Space for Feminism in Scholarship on African?" *Feminist Africa* 1 (2002): 9-33; and Jane Bennett, "Exploration of a 'Gap': Strategising Gender Equity in African Universities," *Feminist Africa* 1 (2002): 34-63.

25. E.g., see Ester Boserup, *Women's Role in Economic Development*, (London: Allen & Unwin, 1970); Hilda Bernstein, *For their Triumphs and for their Tears: Women in Apartheid South Africa*, (London: International Defense and Aid Fund, 1975); Janet Bujra, "Women 'Entrepreneurs' of Early Nairobi," *Canadian Journal of African Studies* 9(2) (1975): 213-34; Nancy Hafkin and Edna Bay (eds.), *Women in Africa: Studies in Social and Economic Change* (Stanford: Stanford University Press, 1976); Sharon Stichter, "Women and the Labor Force in Kenya, 1895-1964," *Rural Africana* 29 (1975-76): 45-67; Remi Clignet, "Social Change and Sexual Differentiation in the Cameroun and the Ivory Coast," *Signs* 3(1) (1977): 244-60; and Martha Mueller, "Women and Men, Power and Powerlessness in Lesotho," *Signs* 3(1) (1977): 154-66.

26. Mary Kalawole, "Re-Conceptualizing African Gender Theory: Feminism, Womanism and the *Arere* Metaphor," in Signe Arnfred (ed.), *Re-thinking Sexualities in Africa*, pp. 251-268 (Uppsala: Nordiska Afrikainstitutet, 2004) at p. 251.

27. See e.g., Pala Achola, *African Women in Rural Development* (Washington, DC: Overseas Liaison Committee, American Council on Education, 1976); Filomina Steady (ed.), *The Black Woman Cross-Culturally* (Cambridge, MA: Schenkman Publishing Co., 1981); Rosalyn Terborg-Penn (ed.), *Women in Africa and the African Diaspora* (Washington, DC: Howard University Press, 1987); Patricia McFadden (ed.), *Southern Africa in Transition: Gendered Perspective* (Harare: SAPES Books, 1998); and Obioma Nnaemeka (ed.), *Female Circumcision and the Politics of Knowledge: African Women in Imperialist Discourses* (London: Praeger Publishers, 2005).

epistemological tensions of studying Indigenous populations from a Eurocentric perspective.[28] Others foregrounded African women's agency in anti-colonial struggles.[29] Today, not only has the scholarship spread to the continent but it has also grown into a formidable body of African feminist literature. These developments, in part, constituted the catalysts that stirred the establishment of GWS on the continent.[30]

Today, at least three quarters of African countries have got some form of GWS site; many of them are located in universities.[31] Loosely, they can be characterized this way: All challenge various forms of dominance and make a conscious effort to mainstream women in intellectual discourse; they are relatively underfunded and institutionally marginalized; although some GWS research around the continent is well entrenched, a lot of it "remains technocratic and narrowly developmentalist," feeding into and fed by a neoliberal ideology;[32] most are partitioned into disciplinary silos organized along the lines of "gender and —"; there are efforts to establish transnational links between the sites but such efforts are still tenuous and further hindered by language blocs; and finally, most are delinked from civil society and community activism.

In 2002, the largest feminist global event that brings together GWS scholars, gender activists and politicians—the Women World's Congress (WWC)—met for the first time on African soil. This eighth meeting of the congress was organized by the department of Women and Gender Studies at Makerere University,

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28. See Josephine Beoku-Betts and Wairimu Ngaruiya Njambi, "African Feminist Scholars in Women's Studies: Negotiating Spaces of Dislocation and Transformation in the Study of Women," *Meridians: feminism, race, transnationalism* 6(1) (2005): 113-132.

29. E.g., Revolutionary Ethiopian Women's Association (REWA), *Ethiopia: Women in Revolution*, (Addis Ababa: REWA, 1984); Organization of Angolan Women, *Angolan Women: Building the Future from National Liberation to Women's Emancipation* (Luanda: Organization of Angolan Women, 1984) – cited in Desiree Lewis (author) and Barbara Boswell (editor), *African Feminist Studies 1980-2002*, (Cape Town: African Gender Institute, 2002) at p. 5.

30. See Amina Mama, "Gender Studies for Africa's Transformation," in Thandika Mkandawire (ed.), *African Intellectuals: Rethinking Politics, Language, Gender and Development*, pp. 94-116 (London: Zed Books, 2005) at p. 95-96.

31. For more information see: https://afi.la.psu.edu/resources/womens-and-gender-studies [accessed Nov 15, 2019].

32. Desiree Lewis, "African Gender Research and Postcoloniality: Legacies and Challenges," in Oyeronke Oyewumi (ed.), *African Gender Studies: A Reader* pp. 381-396 (New York: Palgrave Macmillan, 2005) at p. 381.

and squarely placed an international spotlight on African GWS.[33] That same year, South African academic Desiree Lewis provided a comprehensive review essay of gender resources on the continent.[34] The aim was, *inter alia*, to provide a resource for African GWS curriculum development and teaching. An online network of Gender and Women Studies scholars was also launched that year under the name, GWS-Africa and hosted by the African Gender Institute at the University of Cape Town.[35]

As part of the decolonizing/decolonial project and in order to support the work of GWS in Africa, feminists created their own platforms dedicated to publishing feminist scholarship and consolidating the body of feminist literature on the continent. Journals were established to support African feminist theorizing and epistemologies on the continent and the diaspora. Besides, crises faced in the wider African academic environment also affected GWS. For example, the World Bank- and IMF-prescribed neoliberal policies introduced to Africa in the late 1980s resulted in severe cuts in public funding (including the education sector) and the ensuing internal and external brain drain.[36] The continent has the most underdeveloped publishing infrastructure globally and its research is inadequate.[37] This crisis is deftly captured by Teferra and Altbach:

> Having access to indicators of the knowledge frontiers, such as journals, periodicals, and databases, is a major prerequisite to undertaking viable, sustainable, and meaningful research. In much of Africa, these resources are either lacking or are extremely scarce. The escalating cost of journals and ever-dwindling library and university funds have exacerbated the problem. Many universities in Africa have dropped

33. Gerald Businge, "Uganda Proud to Hold Women Congress," *New Vision* (July 2, 2002); also see Charmaine Pereira, "Between Knowing and Imagining: What Space for Feminism in Scholarship on Africa," *Feminist Africa* 1 (2002): 9-33.

34. Desiree Lewis, *African Women's Studies 1980-2001: A Bibliography* (Cape Town: African Gender Institute, 2002).

35. Amina Mama, "Editorial" *Feminist Africa* 1 (2002): 1-5. More recently, in 2015, another network called the African Feminist Initiative (AFI) was launched and is hosted at Pennsylvania State University. See https://afi.psu.edu/

36. See Teresa Barnes, "Politics of the Mind and Body: Gender and Institutional Culture in African Universities," *Feminist Africa* 8 (2007): 8-25.

37. Damtew Teferra and Philip Altbach, "Trends and Perspectives in African Higher Education," Note 14 at p. 10.

> their subscriptions, while others have simply cancelled their subscriptions altogether. Such extreme measures cannot be surprising in light of the fact that some of these universities cannot even pay salaries on a regular basis.[38]

Hence, the critical situation of research and publishing pertaining in Africa generally is bound to hit a marginalized sector like GWS very seriously. The competing factors that constrain academic publishing in African academies include: "[T]he small number of researchers with the energy, time, funds, and support needed to sustain a journal; the lack of qualified editors and editorial staff; a shortage of publishable materials; a restrictive environment that inhibits freedom of speech; and a lack of commitment to and appreciation of journal production by university administrators."[39]

For most GWS scholars in Africa, such constraints are aggravated by additional gender-related obstacles that disproportionately affect women in society, such as sexist attitudes, domestic responsibilities and vulnerability to violence. Intersections of other structural inequalities based on race, disability, and immigration status also compound the problems that female scholars have to overcome.

The colonial metropolitan centres kept their influence on the intellectual growth of African academics through various mechanisms such as scholarship schemes and tight gatekeeping at the major peer-reviewed publishing outlets. In the context of neoliberalist globalization, commercialization of the university, rising publishing costs and dwindling funds for already underfunded feminist entities, the noose is tightening around most academic necks.[40] The commodification of knowledge has reached another level whereby multinational academic publishers such as Springer, Elsevier, Taylor & Francis, JSTOR, Wiley Publishing, Sage Publications, etc., are preying on struggling journals from the global South for profit. They take over the publishing and marketing

38. Ibid.

39. Ibid.

40. The general trend in Africa shows a steady decline in direct and indirect funding to higher education by governments. See Damtew Teferra and Philip Altbach, "Trends and Perspectives in African Higher Education," Note 14 at p. 6.

of the journals and make millions through institutional and individual subscriptions. It is estimated that commercial journal publishers collect profits in the region of 40 percent.[41] Academic publishing has truly been swallowed by the corporate machine. Not only does this remove open access to the archives of the journals, but it also compromises the independence of the journals which are subjected to the publishers' copyright and licensing restrictions.

If we understand knowledge to constitute intellectual commons, it is a classic example of capitalism appropriation of the intellectual commons through erecting barriers to "open access."[42] Since there are no royalty-paying journals, big publishers prey on the intellectualism of scholars by copyrighting their works. Knowledge should not be commodified because, as Ben Halm reminds us, "human creativity consists not of quantum leaps but of strategic borrowing and building upon previous or received discoveries."[43] Moreover, digital production costs next to nothing, which makes copyright paywalls even more predatory. Michael Kwet is right when he argues: "Free access to digital publications for all people on planet earth, irrespective of their wealth, could improve education, culture, equality, democracy, and innovation. Western technology has been engineered to block free sharing, which impoverishes poor people's ability to obtain knowledge and culture, and reduces communication between rich and poor."[44] The importance of Open Access (OA) literature cannot be overemphasized on a continent with limited resources and a dire need for critical counter-hegemonic scholarship. It is crucial to strike down toll payments for accessing scholarly literature. The idea, therefore, was to disseminate such feminist literature around the continent barrier-free, both in hard copy and online.[45] But the field is still nascent

41. Peter Suber, "Creating an Intellectual Commons through Open Access, Understanding Knowledge as a Commons: From Theory to Practice," (Charlotte Hess and Elinor Ostrom 2006) at p. 4. Available at: https://dash.harvard.edu/handle/1/4552055 [accessed October 21, 2019].

42. Ibid.

43. Ben Halm, "Atalanta's Apples: Postcolonial Theory as a Barrier to the 'Balance of Stories'," *Research in African Literatures* 34(4) (2003): 155-173 at p. 160.

44. Michael Kwet, "Digital Colonialism: US Empire and the New Imperialism in the Global South," *Race and Class* 60(4) (2019): 3-26 at p. 11.

45. Peter Suber clarifies that "barrier-free literature" is literature that is "produced by removing the price barriers and permission barriers that block access and limit usage

and only a handful of feminist journals are located on the continent. It is also telling that the online library of peer-reviewed, African-published scholarly journals—African Journals OnLine (AJOL)—which currently hosts 524 journals, does not carry the category "Gender and Women Studies."

A modest but significant milestone in the decolonizing/decolonial project of the education sector was symbolized in the Budapest Open Access Initiative (BOAI) of February 2002 which called upon institutions and individuals to open up access and remove barriers to literature. The preamble to the BOAI declared:

> An old tradition and a new technology have converged to make possible an unprecedented public good. The old tradition is the willingness of scientists and scholars to publish the fruits of their research in scholarly journals without payment, for the sake of inquiry and knowledge. The new technology is the internet. The public good they make possible is the world-wide electronic distribution of the peer-reviewed journal literature and completely free and unrestricted access to it by all scientists, scholars, teachers, students, and other curious minds. Removing access barriers to this literature will accelerate research, enrich education, share the learning of the rich with the poor and the poor with the rich, make this literature as useful as it can be, and lay the foundation for uniting humanity in a common intellectual conversation and quest for knowledge.[46]

It was demonstrated that the provision of OA was more cost-effective than the traditional forms of dissemination, particularly through self-archiving and generating new journals using alternative funding sources such as governments and foundations like the Open Society Foundation.[47]

The oldest feminist journal on the continent is *Agenda: Empowering Women for Gender Equity*. It was launched in 1987 by a group of women activists, students and scholars from the then University of Natal in South Africa, who formed a group by the

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of most conventionally published literature, whether in print or online." See Peter Suber, "Creating an Intellectual Commons through Open Access," Note 41.

46. Budapest Open Access Initiative, "Read the Budapest Open Access Initiative," https://www.budapestopenaccessinitiative.org/read [accessed October 21, 2019]

47. Ibid.

same name.[48] Produced quarterly, the journal's primary objective was to showcase "contributions of feminist, women authors, on gender equality and issues from a feminist perspective, following stringent academic criteria."[49] Until 2010, the journal was produced by Agenda Feminist Media, but in that year it underwent some structural changes that forced it to take a new direction. On its website, which is now hosted by its new "owner," Taylor & Francis Inc., *Agenda* reported:

> [I]t was critically important to ensure the viability and sustainability of *one of the few (if not only) African feminist journals with international accreditation*. In order *to enhance the sustainability of the Journal*, the Agenda Board has taken the decision to enter into a publishing partnership with Taylor and Francis (part of the Routledge Group). Taylor and Francis will be the Publishing partner, responsible for marketing the journal, and UNISA Press will be the Co-Publishing partner, responsible for typesetting of the journal, as well as the production, dispatch, and subscription sales of sub-Saharan copies of the journal. The terms of the partnership mean that Agenda retains control over the identification of themes, selection of contributions, compilation and editing of the journal. Taylor and Francis will ensure the *creation of an electronic version of the journal's back issues*, and shall mount them on the journal's online website.[50] [Emphasis supplied]

Digitizing all the material in Agenda's archives translates into thousands of dollars in profits for Taylor & Francis. By becoming the property of a corporate publishing house Agenda joins many other academic feminist journals globally, including *Signs, Feminist Theory, Feminist Legal Studies, Frontiers, Meridians, Journal of Gender Studies, Gender & Society* and *Feminist Review*. Capitalism has muscled

48. This was fifteen years after the first scholarly GWS journals were launched globally. The two journals that were launched in 1972 in the US were *Feminist Studies* out of the University of Maryland and *Women's Studies* at Queen's College. *Frontiers* and *Signs* both appeared in 1975. See Patrice McDermott, *Politics and Scholarship: Feminist Academic Journals and the Production of Knowledge*, (Urbana, Ill: University of Illinois Press, 1994) at p. 17.

49. See http://www.agenda.org.za/about-us/introduction-and-context/ [accessed October 20, 2019].

50. See http://www.agenda.org.za/about-us/a-new-direction/ [accessed October 20, 2019].

into feminist spaces, transforming what has been referred to as the "information ecosystem."[51] Ultimately, the relatively small number of big academic publishers will control the development, dissemination and access of knowledge.[52] This is a good example to illustrate how social movements are institutionalized and legitimated in a colonized context. But African feminists are seriously pushing back. For example, as part of African feminist and institutional solidarity around knowledge production, the African Women's Development Fund (AWDF)—a regional grant making foundation—has, over the years, awarded grants to Agenda to support its operations and strategy as well as special editions of the journal. [53]

Another critical journal, which had a brief lifespan, was the *Southern African Feminist Review* (SAFERE) based at the Southern African Institute for Policy Studies in Harare, Zimbabwe, with a maiden issue published in 1995. Although it still has a presence on AJOL, its last issue was published in the year 2000. This is not surprising in light of the research and publishing context painted above. Indeed, it is remarkable that some GWS journals remain afloat despite the severe obstacles they face.

The biannual *Feminist Africa* (FA) made its debut from the African Gender Institute (AGI) at the University of Cape Town in 2002 and announced its goal as working towards developing "a feminist intellectual community by promoting and enhancing African women's intellectual work."[54] Its design was quite different from conventional journals in that it accommodated several genres including formal articles, profiles, conversations, standpoints and poems. Feminist journals are keenly aware of "the political importance of constructing an available and legitimated body of oppositional knowledge."[55] *Feminist Africa* sidestepped the patriarchal-racist gatekeepers by "keeping its own gate" which

51. Sara Caro, *How to Publish Your PhD: A Practical Guide for the Humanities and Social Sciences* (Los Angeles, CA: Sage, 2009) at p.4.

52. Ibid.

53. Jessica Horn, AWDF Director of Programmes, in personal interview with the author, December 28, 2019. AWDF has also met the bulk of AFF funds.

54. See Editorial Policy Statement, *Feminist Africa* 1 (2002), p. ii.

55. Patrice McDermott, *Politics and Scholarship,* Note 48, at p.1.

meant that each scholarly article was reviewed by at least one African feminist.[56] In 2017, the journal took a two-year hiatus to recharge, re-strategize on how to forge ahead and accomplish its goals without compromising core values. The ruminations of the founding editor-in-chief in the 2017 issue were reflective of the dilemmas facing African GWS today:

> How can we make feminist scholarship more possible on the African continent today? After all, as various other feminist scholars have done, we were able to carry out the FA work in the shifting cracks and crevices of an institution that had its own problems… Second, there are the problems of resource hunger that have only intensified… Third, and related, is we have become more aware of the contradictions of our heavy reliance on upaid, informalised labour, because this reflects the institutional privilege of the highly-skilled minority (like ourselves) who have been able to find ways to participate in the work that is so liberating, and still put bread on the table… The level of editorial work was especially intense because we sought to redress the fact that many contributors had never had the opportunity to be editorially supported by peers, and cultivate what it means to work through the multiple revisions that are required to produce writing that is legible across multiple contexts.[57]

The journal has now acquired a new home at the Institute of African Studies at the University of Ghana. For now, *Feminist Africa* has resisted publishing under the wings of corporate publishing houses discussed above mainly because they want to hold on to their original principles such as open access.[58]

The third and final scholarly GWS journal on the continent, at the time this book went to press is *Gender Questions*. It was established in 2013 by the Institute of Gender Studies at the University of South Africa (UNISA). It comes out once a year and describes itself as an "interdisciplinary peer-reviewed research journal" covering "all aspects of gender studies, including feminist research, masculinity

56. Amina Mama, "The Power of Feminist Pan-African Intellect," Note 13 at p. 8.

57. Ibid. at p. 11.

58. Ibid. at p. 12.

studies and studies in alternative sexualities."[59] Unfortunately, *Gender Questions* is not an Open Access journal.

Significantly, the three current GWS journals on the continent were all birthed by South African institutions. This points to the country's geopolitical power and relative economic dominance on the continent. It also comes out of South Africa's post-apartheid sensitivity to issues of dominance and discrimination, which breeds a relatively more dynamic feminist society. As described by Mama above, it takes much more than feminist transformative energy to run and maintain a reputable feminist journal. From basic infrastructure such as reliable electricity and internet connectivity to full-time editors and marketing professionals; all these are not guaranteed in the poorly-resourced and mismanaged African countries.

Notably, there are a few journals managed by diasporic African feminists in the global North, for example the subscription-only e-journal *JENdA: A Journal of Culture and African Women Studies* which was established in 2001. The latest kid on the block is the *Journal of African Gender Studies* (JAGS), established in 2019 and published by Goldline & Jacobs Publishing. Both are based in the US and, as indicated above, prohibitive publishing costs means that neither has open access. At least one donor on the continent publishes what they describe as a "Journal of African Women's Experience." *BUWA!* is an open-access journal published by the Women's Rights Programme of the Open Society Initiative for Southern Africa (OSISA), based in Johannesburg, South Africa. Founded in 2009, the journal is published once a year and relies on commissioned and unsolicited material. Its target audience is both academics and non-academics working on African women's rights. The name of the journal is an adaptation of the SeSotho word "bua" which means "speak" to reflect its mission of amplifying African women's voices.[60]

Like all developing fields of study, feminist studies on the continent have gone through a process of self-reflection, self-criticism and growth. The fact that most of us were exclusively

59. UNISA Press Journals, Gender Questions, https://upjournals.co.za/index.php/GQ/about [accessed Oct 24, 2019].

60. For more information see OSISA website at www.osisa.org

trained through colonial paradigms, it takes conscious unlearning and relearning to "shake off" the colonial filters through which we view the world. As captured by Sondra Hale in her pithy admission: "What do our points of view reflect about the politics of knowledge? About the world in which we live? About the institutions in which we are taught and where we teach?… I often introduce myself, only partly in jest, as a 'recovering anthropologist' —mostly to underscore the self-transformation I have tried to undergo to shake off (like an *intifada*) some of the ideological trappings embedded in the field."[61]

When engendering knowledge discourse and knowledge production, feminists have to be careful not to fall into the trap of projecting African women as hapless victims of a totalizing patriarchal-capitalist oppression. As Chandra Mohanty pointed out in reviewing mainstream Western feminist research on non-Western women: the focus was "on finding a variety of cases of 'powerless' groups of women to prove the general point that women as a group are powerless."[62] The fact is that women, like all oppressed groups, have agency and always engage in some form of resistance, many times with a lot of creativity. Hence, research on macro structures and processes needs to be complemented with interpersonal (micro) relationships that shed light on people's everyday lives. Even as we analyze African women, their differences must be acknowledged.

And yet today's reality is that we live in globalized transnational spaces and our feminisms must respond to this context. Shohat puts it succinctly: "Any serious analysis has to begin from the premise that genders, sexualities, races, classes, nations, and even continents exist not as hermetically sealed entities but, rather, as part of a set of permeable, interwoven relationships. This kind of relationality is particularly significant in a transnational age typified by the global traveling of images, sounds, goods, and

61. Sondra Hale, "Colonial Discourse and Ethnographic Residuals: The 'Female Circumcision' Debate and the Politics of Knowledge," *Ufahamu* 22(3) (1994): 26-35 at pp. 26-27.

62. Chandra Talpade Mohanty, "Under Western Eyes: Feminist Scholarship and Colonial Discourses," *Feminist Review* 30 (1988): 61-88 at p. 66.

populations."[63] As this book demonstrates, the substantial body of feminist literature by African women is testimony to the contribution of GWS. Indeed, the sustained and sharp critiques of colonizing structures and discourses that has emerged from the corpus of African feminist materials continues to expand the decolonial horizons of many critical areas and disciplines.[64] In excavating African historiographies, for example, African feminists have insisted on the need to include "*her*stories" in order to avoid truncated and skewed analyses of our pasts.[65] Investigations of the state and statecraft in political science have been deeply enriched by gendered analyses of political structures, institutions and practices.[66] Feminist economic thinking introduced the concept of "care economy" into classical and neoclassical modernist economics conceptualizations, to highlight the key role that unpaid household work plays in the sustenance of markets and the state.[67] In Religious Studies, the important work of feminist hermeneutics in Biblical Studies has, for example, laid bare the androcentric interpretation of the Bible and surfaced the muted voices, images and contributions of biblical women.[68]

African feminists have also called scholarly attention to the importance of contextualizing gender and oppression in order to

63. Ella Shohat, "Area Studies, Tansnationalism, and the Feminist Production of Knowledge," Note 5, at p. 1269.

64. Desiree Lewis, "African Gender Research and Postcoloniality: Legacies and Challenges," Note 32.

65. E.g., see Cheryl Johnson-Odim and Nina Mba, *For Women and the Nation: Fnimilayo Ransome-Kuti of Nigeria* (Chicago: University of Illinois Press, 1997).

66. See e.g., Sylvia Tamale, *When Hens Begin to Crow: Gender and Parliamentary Politics in Uganda* (Boulder, CO: Westview Press, 2011); Amina Mama and Margo Okazaw-Rey, "Militarism, Conflict and Women's Activism in the global Era: Challenges and Prospects for Women in Three West African Contexts," *Feminist Review* 101 (2012): 97-123; Aili Tripp, *Women and Power in Post-Conflict Africa*, (New York: Cambridge University Press, 2015); and Anne M. Goetz and Shireen Hassim (eds.), *No Short Cuts to Power: African Women in Politics and Policy Making* (London: Zed Books, 2003).

67. The term "care economy" is attributed to British feminist economist, Diane Elson. See her article, "Male Bias in Macro-Economics: The Case of Structural Adjustment," in D. Elson (ed.), *Male Bias in the Development Process*, pp. 164-190 (Manchester: Manchester University Press, 1995). For its application in the African context see Aderanti Adepojou (ed.) and Christine Oppong, *Gender, Work and Population in Sub-Saharan Africa* (Portsmouth, UK: James Currey, 1994); and Marjorie Mbilinyi, "Debating Land and Agrarian Issues from a Gender Perspective," *Agrarian South: Journal of Political Economy* 5(2&3) (2016): 164-186.

68. See e.g., Gerald West and Musa Dube (eds.), *The Bible in Africa: Transactions, Trajectories and Trends*, pp. 11-28 (Leiden: Brill, 2000).

overcome the coloniality of feminist scholarship. Even though most of these feminist conceptual frameworks have not been mainstreamed and are mainly considered subfields in their respective disciplines, there is no doubt that they have greatly expanded the theoretical boundaries of discussions of decolonization/decoloniality and deepened our understandings of our power to engender transformative change.

One would think that GWS would have come of age by now on the African continent. Unfortunately, this is not quite the case. Given that much of the work done by GWS analyzes the political economy of society—revealing a better understanding of global power structures and relations of power—it does not have many friends. In other words, the transformative potential in GWS poses a threat to the powers that be, making it an unpopular arena of discourse and action. Many men in the academy resent it for exposing patriarchal-capitalist power and control.[69] And as part of the decolonization/decolonial project, it is highly unpopular with the colonizers, many of whom have appropriated its efforts.[70] All this is manifested in the fact that feminist scholarship is generally not taken seriously by traditional academic gatekeepers. GWS programmes are often underfunded by their parent institutions. Furthermore, feminists within the academy are often alienated and even threatened. Viewed as "bitches" by the "old boy" networks within the patriarchal academies, feminist thinkers are at worst largely vilified, at best, kept at arm's length.[71]

As is the case in the public spaces of wider society, sexuality sits at the centre of the gendered institutional culture for women in the African academy. In particular, women at all levels (academic, staff and students) have to contend with problems relating to sexual harassment, rape and other forms of gender-based violence (GBV).[72] So, even as feminists in GWS spaces research and analyze

69. See Sylvia Tamale and J. Oloka-Onyango, "Bitches at the Academy: Gender and Academic Freedom at the African University," *Africa Development* 22(1) (1997): 13-37.

70. See Mariama Awumbila, "Gender and Geography in Africa: Developments, Challenges and Trajectories for the Future," *Documents d'Anàlisi Geogràfica* 49 (2007): 43-56.

71. See Teresa Barnes, "Politics of the Mind and Body," Note 36.

72. For more information on sexual harassment in African universities see: Jane Bennett, "Exploration of a 'Gap': Strategising Gender Equity in African Universities," *Feminist*

GBV, they are forced to confront it at very personal levels either as survivors or as counsellors to other survivors.[73]

Finally, in addition to journal production, feminists on the continent have been engaged in the production of scholarly monographs, conference proceedings, theses and dissertations, working papers, research reports and other "grey" literature as open-access materials. A good example is the Women and Law in Southern Africa (WLSA) initiative that was started in 1989 by female lecturers in the region. As a regional project covering seven countries in southern Africa (Botswana, Lesotho, Malawi, Mozambique, Swaziland, Zambia and Zimbabwe), its members conduct collaborative and strategic research predicated on academic and activist approaches. Their research agenda includes analyzing the legal status of women on issues ranging from land to reproductive health to inheritance, published as edited books and working papers.[74] Such literature has been invaluable for GWS and the fact that it is open access means that it is fully accessible at no cost. An Afro-feminist decolonial project must go beyond GWS that focuses on elitist intellectualism by seeking to document non-academic and non-scholarly material. The aim is to erase the boundaries that separate and hierarchize knowledge. An integrated body of organic knowledge is crucial as "it captures the complexity of historical process and social change and it is from this that people and movements can reflect and learn."[75] Documentation encompasses much more than archiving; in addition to paper and digital files, it entails other media such as booklets, newsletters, photographs, audio or video recordings, art, blogs, music and other popular genres. And equally important to the feminist task of documentation is dissemination for maximum reach and impact.

So, the challenges that African WGS face are abundant but there is hope at the end of the tunnel. Invigorating and investing in GWS around the continent is a key part of the decolonization/decolonial

Africa 1 (2002): 34-63. Also see various reports at African Feminist Initiative, https://afi.la.psu.edu/resources/policy-briefs-and-reports [accessed Nov 15, 2019].

73. Ibid.

74. See Anne Hellum (ed.), *Perspectives on Research Methodology* (Harare: Women and Law in Southern Africa Research Project, 1990).

75. Sylvia Tamale and Jane Bennett, "Legal Voice: Challenges and Prospects in the Documentation of African Legal Feminism," *Feminist Africa* 15 (2011): 1-16 at p.2.

process. African-American scholar bell hooks encourages us not to despair for "When despair prevails we cannot create life-sustaining communities of resistance."[76] So African women, in their diversities and multiple inequalities must keep hope alive. Next, we examine the contextual and conceptual diversities of African women and how these relate with resistance.

Beyond Racism: Multiple Inequalities and Intersectionality

Mainstream scholar-activists of Pan-Africanism or African philosophy who challenge the structures of racial oppression have tended to ignore the institutions of gendered oppression and, in some cases, even reinforced them. While extremely critical of imperialism and racism, celebrated African leaders such as Kwame Nkrumah, Léopold Senghor, Sékou Touré and Kenneth Kaunda seemed to be oblivious to issues of sexism. Tanzania's Julius Nyerere may have written about gender justice but he did not always practice it. In his 1944 booklet, *Uhuru waWanawake: Wanawakeni tai, siovifranga* [*Women's Freedom: Women are Eagles, Not Chickens*], Nyerere declared that equal opportunities between men and women was mandatory.[77] However, his own political actions were far from putting that theory into practice, revealing his gender blindness. Nyerere's first cabinet in 1961 excluded women altogether. Bibi Titi, who had been instrumental in the liberation struggle alongside Nyerere, confronted him about this political faux pas and his patronizing response was that there was "no woman with the relevant experience."[78] But Sophia Kawawa was quick to point out to Nyerere some male appointees who had been her

76. bell hooks, *Teaching Community: A Pedagogy of Hope* (New York: Routledge, 2003) at p. 12.

77. Julius Nyerere, *Women's Freedom: Women are Eagles, Not Chickens* (Kampala: Fountain Publishers, 2013, 1944).

78. Ruth Meena, "A Conversation with Bibi Titi: A Political Veteran," in Marjorie Mbilinyi, Mary Rusimbi, Seithy Chachage and Demere Kitunga (eds.), *Activist Voices: Feminist Struggles for an Alternative World*, pp. 140-154 (Dar es Salaam: Tanzania Gender Networking Programme, 2003) at p. 148.

classmates with no superior qualification to hers but for the fact that they were men.[79]

Likewise, the first generation of researchers on women globally and on the continent tended to treat women as an undifferentiated homogenous group, making references to categories such as "Third World women" who suffered a homogenized form of patriarchy.[80] As Imam and Mama pointed out, African women were "caricaturized as a limited series of [negative] stereotypes."[81] Such universalist assumptions ended up producing what Ella Shohat referred to as a "homogenous feminist master narrative."[82] She argued that "Eurocentric definitions of feminism have cast "third world" women into a fixed stereotypical role, in which they play the part of passive victims lacking any form of agency."[83] Yet Afro-Feminisms have also produced their own silences around issues of non-conforming sexualities and gender identities.

Part of the colonial project was to suppress heterogeneity, therefore, any serious analysis of decolonization and decoloniality must go beyond race and pay close attention to the nuanced and complex intersections of oppressive systems based on gender, sexualities, migration, poverty, religion, etc. Colonized people are diverse and experience oppression differently. It would be ironic to challenge one form of domination while unintentionally reifying other forms of oppression. So, while all Africans are adversely affected by enduring legacies of colonialism and its convergence with racism, our positioning within diverse social categories based on gender, ethnicity, class, sexuality, disability, religion, age, marital status, etc. means that we experience oppression differently. In short, we as a continent of people of African descent, cannot understand or analyze racism in isolation of other social categories. Ayesha Imam reminds us that "In revolting against

79. Angellah Kairuki, "The Role of Women in Politics in Tanzania," *Argumente und Materialienzum Zeitgeschehen* 90 (2013): 17-23, at p. 17. Available at: https://www.hss.de/download/publications/AMZ_90_Frauen_05.pdf [accessed October 31, 2019].

80. See Chandra Talpade Mohanty, "Under Western Eyes," Note 62.

81. Ayesha Imam and Amina Mama, "The Role of Academics in Limiting and Expanding Academic Freedom," in Mahmood Mamdani (ed.), *Academic Freedom in Africa*, pp. 73–107 (Dakar: CODESRIA, 1994) at p. 82.

82. Ella Shohat, "Area Studies, Transnationalism, and the Feminist Production of Knowledge," Note 5, at p. 1270.

83. Ibid. at 1269-1270.

Western ethnocentric false universalisations, we should be careful not to enshrine in their place equally false essentialisations of Africanity, which disenfranchise us from examining certain aspects of oppressive relations (whether gender, class or other group)."[84]

Indeed, African women raised questions of multiple dominations within male-led liberation movements, challenging dominance within multiple systems of oppressions that they experienced simultaneously. Alongside men, African women fought colonial political, racial and economic oppression but their particular activism also sprang from their positioning as women who suffered structural sexism and exploitation within and outside the liberation movements.[85]

In the global North, issues of multiple oppressions were first highlighted by African-American women who educated their White counterparts in the women's movement about the different ways that they experienced sexism. The defiant speech delivered by Sojourner Truth at the 1851 Women's Rights Convention in Akron, Ohio was particularly poignant and forceful. Her repeated rhetorical question, "Ain't I a woman?" was addressed to White women who spoke of gender equality but ignored issues of racial inequality under American slavery.[86] At the same time, it was addressed to White men who described women as "too frail" to participate in politics. Truth pointed out that the tough work she did as a slave hand could hardly be endured by a "frail" individual.[87] But, as Xhercis Méndez points out, Truth's struggle for recognition as a "woman" or indeed as a "human" binds her into translating

84. Ayesha Imam, "Engendering African Social Sciences," Note 23 at p. 17.

85. See e.g., Bahati Kuumba, "'You've Struck a Rock': Comparing Gender, Social Movements and Transformation in the United States and South Africa," *Gender & Society*, 16(4) (2002): 504-523. Also see Sylvia Tamale, *When Hens Begin to Crow*, Note 66; and Akosua Adomako Ampofo, Josephine Beoku-Betts and Mary J. Osirim, "Researching African Women and Gender Studies: New Social Science Perspectives," *African and Asian Studies* 7 (2008): 327-341.

86. María Lugones argues that the colonial answer to Sojourner Truth's question would be a "No" because under coloniality of gender all non-White women were constructed by colonialism as "females" and not women. See María Lugones, "Toward a Decolonial Feminism," *Hypatia* 25(4) (2010): 742-59 at p. 745.

87. See Elizabeth C. Stanton, Susan B. Anthony and Matilda J. Gage (eds.), *History of Woman Suffrage* (New York: Fowler & Wells, 1881). The history of intersectional thinking goes as far back as the nineteenth century in the writings of Black American women such as Anna Julia Cooper, Harriet Jacobs and Ida B. Wells. See Vivian May, *Pursuing Intersectionality, Unsettling Dominant Imaginaries,* (New York: Routledge, 2015).

"herself and her experience through the dominant conception of gender in ways that are (re)colonizing."[88] Over a century later, the issue of intersectional oppression was foregrounded and analyzed in the critical writings of many scholars.[89] But the one who coined the term and lent it conceptual rigour was the African-American legal theorist Kimberlé Crenshaw.[90] The term basically refers to the simultaneous ways that oppressed people experience multiple oppressions based on their multiple identities. She explained that since people's experience of discrimination-based identities such as race and gender are not mutually exclusive, so too should their analyses be intersectional. This is necessary to avoid essentializing Blackness, womanhood, or any other social category.[91] María Lugones sums it up neatly: "Intersectionality reveals what is not seen when categories such as gender and race are conceptualized as separate from each other."[92]

In other words, a Black woman's experience of racism and sexism are not separate (i.e., additive) but rather, mutually constitutive; they are not quantitative but qualitative. Systems of oppression do not operate separately along a single axis (e.g., race) but work simultaneously, shaping each other interactively: "Because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into

88. Xhercis Mendez, "Notes towards a Decolonial Feminist Methodology: Revisiting the Race/Gender Matrix," *Trans-Scripts* 5 (2005): 41-59 at p. 52.

89. E.g., see bell hooks, *Ain't I a Woman: Black Women and Feminism* (New York: South End, 1981); Akasha G. Hull, Patricia Bell-Scott and Barbara Smith (eds.), *But Some of Us are Brave: All the Women are White, All the Blacks are Men: Black Women's Studies* (New York: Feminist Press, 1982); Floya Anthias and Nira Yuval-Davis, "Contextualizing Feminism: Gender, Ethnic and Class Divisions," *Feminist Review* 15 (1983): 62-75; Audre Lorde, "Age, Race, Class and Sex: Women Redefining Difference," *Sister Outsider: Essays and Speeches by Audre Lorde,* pp. 114-123 (California: Crossing Press, 1984); and Patricia H. Collins, *Black Feminist Thought: Knowledge, Consciousness and the Politics of Empowerment* (Boston: Unwin Hyman, 1990).

90. Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics," *University of Chicago Legal Forum* 1989 (1989): 139-168. This is similar to the issue of sexual harassment, which many women had experienced but lacked the language to articulate it. See Lin Farley, *The Sexual Shakedown: Sexual Harassment of Women on the Job* (New York: McGraw-Hill, 1978).

91. Also see Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color," *Stanford Law Review* 43(6) (1991): 1241-1300.

92. María Lugones, "Heterosexualism and the Colonial/Modern Gender System," *Hypatia* 22(1) (2007): 186-209 at p. 192.

account cannot sufficiently address the particular manner in which Black women are subordinated."[93] A Black woman experiences racism differently from a Black man because hers is a "melded" experience of gendered racism. Moreover, her melded experience does not mean that the Black man's experience of racism is more "intense" or "pure"—it is just different. She is Othered on two fronts, while he is Othered on only one. If the Black woman also happens to be disabled, then the intersection of the three systems of oppression are interwoven and co-produced in complex ways to emerge as a different discriminatory and Othering experience to that of the man or the first woman.[94] It is crucial that law enforcers, social justice activists, the media, health workers and other duty bearers fully understand this dynamic and stop thinking of discrimination superficially as residing in separate, neatly-marked compartments. For many disadvantaged social groups, discrimination is an inextricably blended experience.

Again, even when multidimensionality is acknowledged, it is conceptually harmful to view people's multiple identities like a rainbow of distinct separate colours adjacent to each other. Our different "selves" are compounded like a kaleidoscope—complex, diverse and constantly morphing and eluding prediction. Instead of thinking in terms of intersecting categories, we should think "intersectionally."[95] Crenshaw notes that "the failure to embrace the complexities of compoundedness is not simply a matter of political will, but is also due to the influence of a way of thinking about discrimination which structures politics so that struggles are categorized as singular issues. Moreover, this structure imports a descriptive and normative view of society that reinforces the status quo."[96] No single discrimination holds an independent effect on

93. Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex," Note 90 at p. 140.

94. See Trinh Minh-ha, *Woman, Native, Other* (Bloomington: Indiana University Press, 1989); Nira Yuval-Davis, "Intersectionality, citizenship and contemporary politics of belonging," *Critical Review of International Social and Political Philosophy*, 10(4) (2007): 561-574 at p. 565; and Bridget Byrne, "Rethinking Intersectionality and Whiteness at the Borders of Citizenship," *Sociological Research Online* 20(3) (2015): 1-16.

95. Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex," Note 90 at p. 149. Also see Catharine MacKinnon, "Intersectionality as Method: A Note," *Signs* 38(4) (2013): 1029-1030 at p. 1028.

96. Kimberlé Crenshaw, Ibid. at p. 167.

the marginalized; none waits at a stop sign waiting for another discrimination to leave. Rather, discriminations intermingle, operating in enmeshed multiplicities.[97] Vivian May elucidates on how intersectionality links the structural and the experiential: "intersectionality examines how power and privilege operate on several levels at once (experiential, epistemological, political, and structural) and across (and within) categories of experience and personhood (including race, gender, sexuality, disability, social class, and citizenship)."[98] Hence, the framework of intersectionality is "a response to the lengthy history of essentialism and exclusion that has plagued both feminist and anti-racist scholarship" and "centers the experiences of subjects whose voices have been ignored."[99] Its formidable strength lies in its ability "to conceptualize personhood and agency in ways that acknowledge the multifaceted nature of subjectivity as well as the complexity of multiple social structures."[100]

The epistemic value of intersectionality is that it provides us with a critical lens within which to view the world. In the neoliberal geopolitical order, the continent of Africa itself is positioned at the assemblage point of multiple structural inequalities and erasures, relative to other continents. Operating simultaneously, the push-pull of multiple forms of power thrust Africa to the bottom via the overlapping hegemonies of race, civilization, markets, nation, gender, White supremacy, sexuality, language, culture and so forth. In sum, Africa "experiences" its subordination intersectionally. And an intersectional approach to the continent's decolonization/decolonial efforts is crucial. An intersectional approach is multifaceted, challenging Western hegemonic structures and institutions, including the very nature of knowledge (ontology) and how we access that knowledge (epistemology).

Dismantling these interlocking structures of oppression that undergird Africa's status is central to the decolonizing/decolonial mobilization and must target the nodal points where the systems

97. See Deborah King, "Multiple Jeopardy, Multiple Consciousness: The Context of a Black Feminist Ideology," *Signs* 14(1) (1988): 42-72.

98. Vivian May, *Pursuing Intersectionality*, Note 87, at p. 23.

99. Jennifer Nash, "Re-thinking Intersectionality," *Feminist Review* 89 (2008): 1-15 at p. 3.

100. Vivian May, *Pursuing Intersectionality*, Note 87, at p. 11.

hinge. The approaches must also be intersectional and strategic. For instance, an intersectional approach would not challenge capitalism and patriarchy separately but conceptualize them as capitalist patriarchies.[101] It also means Africa must build alliances and coalitions with social justice groups around the world across systems of domination. Therefore, in challenging crisscrossing inequalities, Vivian May counsels that "solidarities need to be forged via mutual commitments, not via principles of homogeneity or sameness."[102] She explains that:

> [A]n intersectional orientation (to assessing reality, questioning established mindsets, examining the impact of past practices on the present day, and imagining and fighting for a transformed future) is intrinsically multidimensional… Developed in the context of struggles for social justice, intersectionality offers a means to question and to challenge dominant logics, to further antisubordination efforts, and to forge collective models for social transformation that do not replicate or reinforce the inequalities, erasures, and distortions animated and buttressed by either/or logics…[103]

What is so appealing about intersectional theory, is that "it approaches privilege and oppression as concurrent and relational and attends to within-group differences and inequities, not just between-group power asymmetries."[104] Decolonial analyses would greatly benefit from this approach which surfaces the ways that systems of oppression interrelate and how patterns and logics interact to reinforce various forms of domination.[105] For example, analytically, it would highlight and explain how the male-dominated pan-African Movement or the predominantly heterosexual women's movements on the continent unwittingly uphold the very forms of domination that they seek to dismantle.

One of the challenges that the theory of intersectionality has run

101. See Alison Bailey, "On Intersectionality, Empathy and Feminist Solidarity: A Reply to Naomi Zack," *Journal of Peace and Justice Studies* 18(2) (2009): 14-37 at p. 17

102. Vivian May, *Pursuing Intersectionality,* Note 87, at p. 4.

103. Ibid.

104. Ibid. Also see Avtar Brah and Ann Pheonix, "Ain't I a Woman? Revisiting Intersectionality," *Journal of International Women's Studies* 5(3) (2004): 75-86.

105. Vivian May, Ibid. at p. 5.

into is its difficulty to translate into a clear analytic methodology.[106] Scholars found missing a rigourous method of examining the compoundedness of the multiple oppressed subjects. Chang and Culp legitimately queried: "How does one pay attention to the points of intersection?"[107] Some theorists have attempted to put forward some methodological insights for examining the intersections of oppression and privilege and the roles that they play in mediating or entrenching oppressive experiences.[108] Scholars such as Baukje Prins and Floya Anthias understand intersectionality, not as a single theoretical framework, but as a lens for understanding multiple intersecting hierarchies.[109] Trina Grillo too views the concept of intersectionality as a tool in and of itself, useful for "dismantling the master's house."[110] For her, the basis of intersectionality lies in the following reality:

> Each of us in the world sits at the intersection of many categories: She is Latina, woman, short, mother, lesbian, daughter, brown-eyed, long-haired, quick-witted, short-tempered, worker, stubborn. At any one moment in time and in space, some of these categories are central to her being and her ability to act in the world. Others matter not at all. Some categories, such as race, gender, class, and sexual orientation, are important most of the time. Others are rarely important. When something or someone highlights one of her categories and brings it to the fore, she may be a dominant person, an oppressor of others. Other times, even most of the time, she may be oppressed herself. She may

106. See e.g., critiques by Jennifer Nash, "Re-thinking Intersectionality," Note 99; Naomi Zack, *Inclusive Feminism: A Third Wave Theory of Women's Commonality* (Lanham, MD: Rowman & Littlefield Publishers, 2005); Robert Chang and Jerome Culp, "After Intersectionality," *University of Missouri-Kansas City Law Review*, 71 (2002): 485–491; and Leslie McCall, "The complexity of intersectionality," *Signs* 30 (3) (2005): 1771–1800.

107. Robert Chang and Jerome Culp, "After Intersectionality," *University of Missouri-Kansas City Law Review* 71 (2002): 485–491 at p. 485.

108. E.g. see Leslie McCall, "The complexity of intersectionality" Note 106; and Ann Phoenix, "De-colonising Practices: Negotiating Narratives from Racialised and Gendered Experiences of Education," *Race Ethnicity and Education* 12(1) (2009): 101-114.

109. Baukje Prins, "Narrative Accounts of Origins: A Blind Spot in the Intersectional Approach?" *European Journal of Women's Studies* 13 (2006): 277-290; and Floya Anthias, "Intersectional what? Social divisions, intersectionality and levels of analysis," *Ethnicities*, 13(1) (2013): 3–19.

110. Trina Grillo, "Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House," *Berkeley Women's Law Journal* 10(1) (1995): 16-30. Grillo borrows a quote from Audre Lorde's essay, "The Master's Tools Will Never Dismantle the Master's House." See Audre Lorde, *Sister Outsider*, pp. 110-113, Note 1.

> take lessons she has learned while in a subordinated status and apply them for good or ill when her dominant categories are highlighted.[111]

Master narratives—found in sites of power such as the law, history text books, literature, media, religion and development work—are often blind to intersectional identities and sufferings. They frequently take a fragmented view of human beings, analyzing one dimension at a time. In Grillo's example above, the tendency for the purveyors of master narratives will be to consider the woman "as a mother or a worker, but never both at the same time."[112]

Given the fact that intersectionality is transdisciplinary, it is quite malleable and pliable enough to accommodate diverse approaches. One useful and complementary methodological approach of examining intersectionality is by integrating it with feminist research methods such as interpretive narratives, life-histories and case studies. Such qualitative methods produce in-depth and rich data, referred to as "thick descriptions" which researchers can inductively analyze to offer a particular understanding of intersecting identity categories that emerge as lived experiences.[113] They allow researchers to glean useful insights from people's stories and experiences and to explore ways that those experiences are linked to structural power arrangements. Intersectional interpretations would search for what Lorraine Code calls "layers of suppressed meaning" from the data.[114] Rachelle Chadwick elaborates:

> For narrative intersectionality to be achieved it is necessary for researchers to acknowledge and interrogate the material contexts and structural constraints within which narratives are embedded and

111. Trina Grillo, Ibid. at p. 17.

112. Ibid.

113. Rachelle Chadwick, "Thinking Intersectionally with/through Narrative Methodologies," *Agenda* 31(1) (2017): 5-16. Also see Leslie McCall, "The complexity of intersectionality," Note 106; Carolyn Steedman, *Landscape for a Good Woman* (London: Virago, 1987); Baukje Prins, "Narrative Accounts of Origins," Note 109; and Heidi Mirza, "A Second Skin: Embodied Intersectionality, Transnationalism and Narratives of Identity and Belonging Among Muslim Women in Britain," *European Journal of Women's Studies* 35 (2013): 5-15.

114. Lorraine Code, "They Treated Him Well: Fact, Fiction, and the Politics of Knowledge," in Heidi Grasswick (ed.), *Feminist Epistemology and Philosophy of Science: Power in Knowledge*, pp. 205-221 (London: Springer Dordrecht Heidelberg, 2011) at p. 206.

> enabled… we need to 'look inside language as well as outside it' if we are to achieve effective intersectional analyses… Looking inside texts and narratives for ideological traces means implementing a mode of analysis which reads contradictions within texts as refractions of structural, material and ideological contradictions. It means being attuned to the cracks, absences and discontinuities in stories instead of conducting 'smoothed over' analysis which reproduces univocality.[115]

Moreover, storytelling is closely associated with Indigenous ways of knowing and fits in perfectly with decolonizing/decolonial discourses. When narratives are combined with nuanced conceptualizations of power and oppression, intersectional analyses are possible.

Terrell Strayhorn provides us with some simple examples to demonstrate the difference between conducting research with an either/or, single-axis, additive approach versus an intersectional both/and, constitutive approach. Examining gay college students of colour, Strayhorn asked his participants questions like, "How often do you think about your race?" followed by, "what about your sexual orientation?" After long pauses, most participants would struggle to respond to these two questions. Strayhorn dismissed the long pauses as irrelevant to the study. But after he adopted the intersectional methodology, Strayhorn realized "how limited and hierarchical the first question was—it predetermined that students could rank, separate, and then talk about identities discretely. I rephrased the question as an invitation to 'tell me about who they are and their background' and 'how they identify,' leaving open the opportunity to listen attentively and interpret the meaning and significance of identity labels and language."[116]

The silences in the pauses were no longer irrelevant to the researcher. He suddenly viewed them as significant "data": "I 'heard' my participants struggling to contest the presumed binaries, hierarchies, and categories that the original protocol forced upon

115. Rachelle Chadwick, "Thinking Intersectionally," Note 113, at p. 11.

116. Terrell Strayhorn, "Using Intersectionality in Student Affairs Research," *New Directions for Student Services*, No. 157, (Spring 2017), available at: https://onlinelibrary.wiley.com/doi/pdf/10.1002/ss.20209 [accessed November 6, 2019] at pp. 62-63.

them."[117] Strayhorn was also forced to "rethink agency and resistance—to read resistance and agency through silence."[118]

Vivian May pushes the intersectional research strategy further by suggesting that in order to capture the complex interplay between multiple identities, power relations and structural arrangements in which they are embedded, we should adopt the "matrix" approach: "Intersectionality, for instance, contests several taken-for-granted ideas about personhood, power, and social change: in particular, its multidimensional 'matrix' orientation is often at odds with 'single-axis' sociopolitical realities, knowledge norms, and justice frameworks."[119] She argues that the intersectional methodological paradigm that interrogates dominant logic is layered and contextual, not flat and reductive. Its primary aim is to peer into and understand simultaneous privilege and oppression as well as complex subjectivities. Its orientation is not the either/or of duality thinking, but rather it adopts the both/and approach, which unearths the hidden depths of meaning and allows for multiple interpretations to coexist. It also maintains an anti-subordination orientation.[120]

Patricia Hill Collins elaborates on the meaning of the term *matrix* by starting with its basic Oxford English Dictionary meanings which are given as: "the cultural, social, or political environment in which something develops;" or "a mould in which something, such as a record or printing type, is cast or shaped;" or "something (such as a situation or a set of conditions) in which something else develops or forms." Collins then expounds her view on the concept: "These meanings cast the construct of matrix as *a structuring structure* – it is not a benign container in which something happens, but rather shapes and gives structure to dynamic phenomena. Yet intersectionality adds a political analysis to these generic

117. Ibid. at p. 63.

118. Ibid.

119. Vivian May, *Pursuing Intersectionality*, Note 87 at p. 1. Also see Terrell Strayhorn, "Using Intersectionality in Student Affairs Research," Note 116.

120. See Susan Babbitt, "Objectivity and the Role of Bias," in Nancy Tuana and Sandra Morgan (eds.), *Engendering Rationalities* (Albany: State University of New York Press, 2001).

understandings of a matrix."[121] [emphasis supplied] She offers some key dimensions of the "matrix of domination framework" to include:

> First, all contexts of domination incorporate some combination of intersecting oppressions, yet domination and resistance are organized differently across social contexts… Second, while systems of power are theoretically present and potentially available within a matrix of domination, in actuality, some power are more salient than others within particular social contexts. Intersectionality provides a template for seeing multiple systems of power as imminent, yet not all systems of power as equivalent or even visible within a given matrix of domination. A finely-tuned analysis of saliency is essential for intersectional analysis as well as political actions to resist domination… Finally, when informed by intersectionality's focus on intersecting oppressions, the matrix of domination and resistance coexist.[122]

May goes ahead to paraphrase the basic tenets of the matrix approach: "Intersectionality entails learning both to recognize enmeshment and to refrain from atomizing multiplicity. When using its multidimensional, matrix approach, do not artificially parse complexity, fragment compoundedness, or treat mutifacetedness as a hindrance or problem. Turn from either/or logics and single-axis explanations: presume that heterogeneity and incommensurability are present (even if not apparent or understandable on conventional terms) and pursue multiplicity/compoundedness as having significance and meaning."[123]

Insofar as intersectionality activates our awareness of the fluidity and dynamism of people's multifaceted oppressions, it holds enormous conceptual and political purchase for the decolonization/decolonial project. It speaks to postcolonial and feminist analyses of power relations in several ways.[124] First, it helps African people understand why our "truths" do not always match with the official

121. Patricia Hill Collins, "The Difference that Power Makes: Intersectionality and Participatory Democracy," *Revista de Investigaciones Feministas* 8(1) (2017): 19-39, at p. 24.

122. Ibid. at pp. 24-25.

123. Vivian May, *Pursuing Intersectionality*, Note 87 at p. 234.

124. See the special issue of the journal, *Agenda* 31(1), which was devoted to the concept of Intersectionality in the African context.

"truths" constructed in the Eurocentric capitalist-heteropatriarchal master narratives. Intersectionality teaches us "to check for the deep, internal discomfort we feel when something is being stated as gospel but does not match our truth."[125] In short, it serves as "an exhortation" to take into account the complexities involved in issues of inequality and Othering.[126] Secondly, and more important, it offers us a springboard for challenging essentializing master narratives, forcing entities of power to examine what Patricia Hill Collins describes as "interlocking systems of domination."[127] Below, we consider a few examples of how the theory has been tested in Africa.

Intersectional Theory in the African Legal Context

The theory of intersectionality is key to Africa's decolonial and transformational agenda. As people that carry a disproportionate burden of poverty, disease and unpaid care work, African women have been at the centre of testing the empirical and complex application of multiple, intersectional vulnerabilities in courts of law and other legal fora. As elsewhere in the world, the experiences that shape the lives of the majority of women on the continent are context-related, based on intersectional factors. Coloniality is closely related and interwoven into the reconfigured systems of gender hierarchies. Nowhere did women's multiple, interlocking and simultaneous oppressions come to the surface in recent African history than in the South African "fallist" movements spearheaded by the students who challenged institutional power and epistemic coloniality in higher education and beyond.[128] Sexism, homophobia

125. Trina Grillo, "Anti-Essentialism and Intersectionality" Note 110, at p. 22.

126. See Joanne Conaghan, "Intersectionality and the Feminist Project in Law," in Emily Grabham, Davina Cooper, Jane Krishnadas and Didi Herman (eds.), *Intersectionality and Beyond: Law, Power and the Politics of Location*, pp. 21-48 (London: Routledge, 2009) at p. 27.

127. See Patricia Hill Collins, "Black Feminist Thought in the Matrix of Domination' in Charles Lemert (ed.), *Social theory: The multicultural and classic readings*, pp. 615–625 (Boulder, Colo.: Westview Press, 1993).

128. In 2015, South African students rallied to demand for the removal of both symbolic and substantive legacies of colonialism from the sector of higher education. Such agitation, that had fermented since the post-apartheid 1994 elections, culminated into cyber-aided movements with hashtags such as: #RhodesMustFall (RMF); #OpenStellenbosch; #FeesMustFall; and #FreeEducation.

and transphobia reared their ugly heads in multifarious ways within the protests. Hence, female students within these movements drew on their experiences and subjectivities to underscore intersectional oppression. There were several incidents where women were subjected to rape at the hands of fellow male protesters, highlighting the intra-group "differences and inequities" that May described to us.[129] Sandy Ndelu *et al.* reported that such cleavages led to feminist interventions:

> At UCT a group of black, queer, transwomxn strategised around claiming increasingly contested space within #RMF; the UCT Trans Collective disrupted a photographic exhibition hosted by #RMF as a gesture of resisting the erasure of Black trans bodies from official narratives of the #RMF movement. Concurrently, Patriarchy Must Fall emerged at UCT as a challenge to the gendered bias that underpins that university's institutional culture. At UCKAR, Black womxn activists released the #RUReference List, a list which named 11 men accused of rape on that campus, and inaugurated a national debate around rape culture on South African university campuses.[130]

Feminists also staged topless protests on campuses to fight back against rape culture, thereby adding a new hashtag to the campaign: #EndRapeCulture.[131] Using the critical lens of intersectionality, South African feminists redrew the boundaries of the fallist movement, simultaneously redirecting its energy and channeling it into the broader-based social justice movement which integrated intersectional perspectives.

One of the most formidable tools at the disposal of the neocolonial state in the perpetuation of hegemonic control is the Law. However, in addition to its authority as "the purveyor of 'truth,'" law is also "a site for contesting its production."[132] Joanne Conaghan argues that this allows for those who face multiple

129. See Note 104.

130. Sandy Ndelu, Simamkele Dlakavuand Barbara Boswell, "Womxn's and Nonbinary Activists' contribution to the RhodesMustFall and FeesMustFall Student movements: 2015 and 2016," *Agenda*, 31(3-4) (2017): 1-4 at p. 2.

131. See Amanda Gouws, "Feminist Intersectionality and the Matrix of Domination in South Africa," *Agenda* 31(1) (2017): 19-27 at p. 20.

132. Joanne Conaghan, "Intersectionality and the Feminist Project in Law," Note 126, at p. 27.

oppressions to engage with the law, "not just as a remedial strategy but also as a forum for the discursive reconstruction of meaning and understanding."[133] Several activists from sexual minority groups around the continent have challenged the heteronormativity that pervades the courts of law. In so doing, activists have moved the complex identities of homosexuals from the socio-legal margins into the centre; and feminists have been at the forefront of these legal battles.[134] Indeed, as Monica Mbaru *et al.* suggest, "sexuality and gender have become a cultural and legal battleground in Africa…"[135]

In addition to heterosexism, most African sexual minorities also have to contend with economic hardship, political abuse and health-related problems.[136] When they pursue legal redress, the mainstream is forced to deal with their intersectional oppressions, sometimes with successful results, sometimes not.[137] Negative outcomes have led to an expansion and reinforcement of the homophobic colonial laws as happened in Uganda, Nigeria, Zimbabwe, Tanzania, the Democratic Republic of Congo, the Gambia, Cameroon, Kenya, Malawi and Rwanda.[138] The regional level has produced a mixed bag. In 2008, the Coalition of African Lesbians (CAL) applied to the continent's human rights oversight body—the African Commission for Human Rights (ACHR)—for observer status. Such a standing would allow CAL to participate more meaningfully in advocating for the intersecting rights of

133. Ibid.

134. E.g., see The Other Foundation, *Canaries in the Coal Mines: An Analysis of Spaces for LGBTI Activism in Mozambique, Country Report*, (Johannesburg: The Other Foundation, 2017) at p. 9. Available at: http://theotherfoundation.org/wp- content/uploads/2017/06/Canaries_Mozambique_epub_Draft2_CB2.pdf [accessed January 14, 2020].

135. Monica Mbaru, Monica Tabengwa and Kim Vance, "Cultural Discourse in Africa and the Promise of Human Rights Based on Non-Normative Sexuality and/or Gender Expression: Exploring the Intersections, Challenges and Opportunities," in N. Nicol, A. Jjuuko, R. Lusimbo, N.J. Mule, S. Ursel, A. Wahab and P. Waugh (eds.), *Envisioning Global LGBT Human Rights: (Neo)Colonialism, Neoliberalism, Resistance and Hope*, pp. 177-204 (London: Human Rights Consortium, School of Advanced Study, University of London, 2018) at p. 178.

136. Adrian Jjuuko, *Strategic Litigation and the Struggle for Lesbian, Gay and Bisexual Equality in Africa*, (Ottawa: Daraja Press, 2020).

137. Ibid.

138. Adrian Jjuuko and Monica Tabengwa, "Expanded Criminalisation of Consensual Same-Sex Relations in Africa: Contextualising Recent Developments," in N. Nicol *et al.*, *Envisioning Global LGBT Human Rights*, Note 135, pp. 63-96.

those who suffer discrimination based on gender, sexuality and social class at the regional level.[139] After a drawn-out process, CAL was granted observer status in April 2015. However, in August 2018, under pressure from the African Union Executive Council, the Commission withdrew CAL's observer status. The Executive Council reproached the Commission for ignoring "African values" when granting CAL observer status.[140] CAL described this backtracking on the Commission's part as "deeply disappointing" adding that, "The withdrawal of CAL's' observer status actively excludes African women's rights movements and defenders from the vital human rights spaces where decisions are made about us and for us, but ultimately without us."[141] But positive results have come out of countries like Mozambique (2015), Angola (2019) and Botswana (2019)[142] where courts have struck down colonial penal laws that criminalized homoerotic sexuality.

Given that intersectionality is a justice-oriented approach, it is quite unfortunate that the legal framework is generally not fluent in its nuanced language. This is true at all levels of the law—international, regional and national. Courts will generally interpret discrimination through identity silos with total disregard for their intersecting articulations. At other times, they simply coopt the language of intersectionality, giving it marginal status, without really destabilizing the systems of domination. Rwanda, for example, had millions of male and female survivors of the 1994 genocide. All of them, regardless of sex and ethnicity, lived with the genocidal trauma. However, the trauma that women had to deal with was quite different in character relative to that faced by men.

139. See CAL, "Why we Exist," available at: http://www.cal.org.za/about-us/why-we-exist/ [accessed Jan 14, 2020].

140. See International Justice Resource Center, "African Commission Bows to Political Pressure, Withdraws NGO's Observer Status," August 28, 2018, available at: https://ijrcenter.org/2018/08/28/achpr-strips-the-coalition-of-african-lesbians-of-its-observer-status/ [accessed January 14, 2020].

141. See CAL Press Statement released on August 17, 2018, "Women and Sexual Minorities Denied a Seat at the Table by the African Commission on Human and Peoples' Rights," available at:http://www.cal.org.za/2018/08/17/women-and-sexual-minorities-denied-a-seat-at-the-table-by-the-african-commission-on-human-and-peoples-rights/ [accessed January 14, 2020].

142. See judgment in *Letsweletse Motshidiemang v. Attorney General* [2019] MAHGB-000591-16. The state appealed this High Court decision, which had not been heard at the time this book went to press.

This was due to the intersection of ethnicity, gender and sexuality. The gender-inspired and systematic sexual violence meted out against women's bodies and their reproductive capacities transformed their particular experiences of violence into a different kind of trauma for each woman.

Llezlie Green has observed that international human rights treaties provided little guidance for addressing the kind of intersectional discrimination faced by Rwandese women affected by the genocide.[143] This, in part, explains why even the landmark case of *The Prosecutor v. Jean-Paul Akayesu,* which dealt with the grave human rights abuses of the 1994 genocide in Rwanda (including rape), failed to adequately interrogate women's intersectional violations.[144] How exactly were the experiences of Tutsi female survivors of the sexual violence committed by the *genocidaires* a result of their blending ethnicity, gender and sexuality? Green regretted that "While *Akayesu* has clearly made progress in conceptualizing rape as a grave breach of international human rights law, sexual violence perpetrated against and experienced by Tutsi women has not been subjected to an intersectional analysis."[145]Jessica Horn also challenges apolitical psychosocial support that delinks trauma from socioeconomic and political justice, insisting that it is impossible to understand and address emotional health without attending to the external structural factors that underpin it.[146]

Even the United Nations has attempted to mobilize the concept of intersectionality and aligned its analytic form with some of its content. The Committee on the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) realized the treaty's inadequacy in protecting women's intersectional discrimination. Its creative way of "fixing" this problem was

143. Llezlie L. Green, "Gender Hate Propaganda and Sexual Violence in the Rwandan Genocide: An Argument for Intersectionality in International Law," *Columbia Human Rights Law Review* 33 (2002): 733-776.

144. Ibid. See *Prosecutor v. Jean-Paul Akayesu*, Judgment, No. ICTR-96-4-T, T 559 (Sept. 2, 1998).

145. Llezlie L. Green, "Gender Hate Propaganda and Sexual Violence in the Rwandan Genocide," Note 143, at p. 764.

146. Jessica Horn, "Decolonizing Emotional Well-being and Mental Health in Development: African Feminists Innovations," *Gender and Development* 28(1) (2020): 85-98.

through the legal "side-doors" of General Recommendations, Individual Communications, Inquiry Procedures and Concluding Observations.[147] This, rather late appreciation of women's intersecting identities speaks volumes about who dominated the processes of developing this international women's treaty. White middle-class women from the global North tended to take a single-axis analysis of women's oppression based on particularized patriarchy. That is why the history of Article 14 of CEDAW that addresses the specific problems of poor rural women is rather revealing. That particular Article was absent from the UN Declaration that preceded CEDAW and it was not until the fifth draft of CEDAW that it was inserted into the text.[148] Beginning at the first world conference on women in Mexico in 1975, African women activists joined hands with others from the global South and from communist countries such as Yugoslavia to demand for the recognition of the multiple ways in which women suffer domination and the interlinkages between anti-sexist and anti-imperialist struggles.[149] Hence, it took the subjectivity and lived experiences of "Othered" women to bring the intersecting nature of political and socioeconomic rights into the arena of international women's rights.

The liberatory and counter-hegemonic potential of intersectionality for challenging the status quo cannot be overemphasized. For this reason, the concept has met considerable

147. For example, see CEDAW Committee's General Recommendations: No. 28 on the core obligations of States Parties under Article 2 of the CEDAW treaty; No. 33 on women's access to justice; No. 35 on Gender-Based Violence; No. 15 on women and AIDS; No. 18 on women with disabilities; No. 21 on equality in marriage and family relations; No. 24 on women and health; No. 26 on women migrant workers, No. 27 on older women and protection of their human rights, No. 30 on women in conflict prevention, conflict and post-conflict situations, No. 31 on harmful practices, No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women and No. 34 on the rights of rural women. Also see the Committee's communications [e.g., *Jallow v. Bulgaria*, 2012; *S.V.P. v. Bulgaria*, 2012; *Kell v. Canada*, 2012; *A.S. v. Hungary*, 2006; *R. P. B. v. the Philippines*, 2014; *M.W. v. Denmark*, 2016]. Examples of inquiries include Mexico (2005) and Canada (2015). Also see General Recommendation No. 25 of the CERD Committee on gender-related dimensions of racial discrimination [paras 5 & 6].

148. Natalie Kaufman Hevener, "An Analysis of Gender Based Treaty Law: Contemporary Developments in Historical Perspective," *Human Rights Quarterly* 8(1) (1986): 70-88 at p. 76.

149. Ibid. Also see Chiara Bonfiglioli, "The First UN World Conference on Women (1975) as a Cold War Encounter: Recovering Anti-Imperialist, Non-Aligned and Socialist Genealogies," *Filozofija i društvo* 27(3) (2016): 521-541.

resistance from mainstream, hegemonic groups; some have even appropriated its ideas and proceeded to depoliticize and decontextualize it.[150] The backlash is a response to its politics, particularly its ability to expose the taken-for-granted, hidden-from-sight ideas about personhood, power, relationships and social change.[151] Both its subtle theoretical aspects and its practical push-back against structures of oppression represent a "watershed moment" for decolonial disentanglement. One of the insights that intersectionality provides is the idea that systems of oppression are enmeshed and mutually reinforcing—a notion that is clearly demonstrated through the understandings of ecofeminism.

Integrating Afro-Ecofeminism into Decolonization

Afro-ecofeminism is an important pillar of a decolonial feminist approach to reconstructing Africa. Naomi Maina-Okori *et al.* are right when they argue that Indigenous conceptions of interconnectivities go beyond human relations to include nature; they disrupt the nature/culture divide. Based on this understanding, the authors seek to expand the concept of intersectionality by viewing it "as a coalescing and/or a fusing process and as an interconnected multi-directional crossroads."[152] Writing about Afro-ecofeminism, Nigerian leftist feminist Fatimah Kelleher further explains: "Intersectional ecofeminism also underscores the importance of gender, race, and class, interlinking feminist concerns with human oppressions within patriarchy and the exploitations of a natural environment that women are often more reliant upon but also its guardians in many cultural contexts."[153] The link between gender and ecological justice is therefore brought to the fore, providing a different framework for

150. See special issue on "Intersectionality" of the open-access journal, *Ephemera: Theory and Practice in Organization*, 18(1) (March 2018).

151. See Vivian May, *Pursuing Intersectionality,* Note 87.

152. Naomi Mumbi Maina-Okori, Jada Renee Koushik and Alexandria Wilson, "Reimagining Intersectionality in Environmental and Sustainability Education: A Critical Literature Review," *The Journal of Environmental Education* 49(4) (2018): 286-296 at p. 286.

153. Fatimah Kelleher, "Why the World Needs an African Ecofeminist Future," *African Arguments*, March 12, 2019. Available at: https://africanarguments.org/2019/03/12/why-world-needs-african-ecofeminist-future/ [accessed Jan 14, 2020].

analyzing coloniality as it relates to both social and environmental issues. Indigenous knowledge systems, which are usually in tune with nature, can be deployed to address environmental injustices using an integrative view of nature and people.[154]

One of the most pressing issues facing the world today is environmental degradation and climate change. The global "ecological footprint" (i.e., demand on the world's resources) has overshot the planet's regenerative capacity by approximately 50 percent.[155] Human beings are the primary actors in shaping the ecological and biophysical systems which threaten the very health of our planet.[156] Most of this can be traced to neoliberal global capitalism with its fundamentally extractive and predatory mindset that is wreaking havoc on the entire world ecosystem.[157] The socioeconomic and political implications of environmental destruction were addressed by the UN, which culminated in its landmark Paris Agreement of 2016.[158] The agreement—to date ratified by 189 countries—was designed "to combat climate change and to accelerate and intensify the actions and investments needed for a sustainable low-carbon future."[159] At the 2019 UN Climate Action Summit, Secretary-General António Guterres underscored the urgency of the matter: "This is not a climate talk summit. We have had enough talk… This is not a climate negotiation summit. You don't negotiate with nature. This is a climate action summit."[160]

Needless to say, questions abound as to whether the approach of the UN can actually address the diverse magnitude of the crisis.

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154. Ibid.

155. African Development Bank, *Africa Ecological Footprint Report: Green Infrastructure for Africa's Ecological Security* (Tunis: African Development Bank, 2012) at p. 6.

156. See World Wildlife Fund, *Living Planet Report 2014: Species and Spaces, People and Places* (Gland, Switzerland: WWF International, 2014) at p. 8.

157. See Karl Polanyi, *The Great Transformation: The Political and Economic Origins of our Times* (Boston: Beacon Press, 2001—originally published 1944); and Naomi Klein, *This Changes Everything: Capitalism vs. the Climate* (New York: Simon & Schuster, 2014).

158. See Simon Chin-Yee, "Africa and the Paris Climate Change Agreement," *African Affairs,* 115/459, (March 23, 2016): 359-368.

159. See United Nations Climate Change, "What is the Paris Agreement?" https://unfccc.int/process-and-meetings/the-paris-agreement/what-is-the-paris-agreement [accessed October 25, 2019].

160. See United Nations Climate Action Summit 2019, Closing Press Release, available at: https://www.un.org/en/climatechange/assets/pdf/CAS_main_release.pdf [accessed October 25, 2019].

Indeed, the current wave of global, youth-led protests for climate justice can in many ways be contextualized as an anti-capitalist, anti-imperialist movement. Saskia Sassen insists that "the tame language of climate change does not quite capture the fact, at ground level, of vast expanses of dead land and dead water. My argument is that this massive and very diverse set of expulsions is actually signaling a deeper systemic transformation, one documented in bits and pieces in multiple specialized studies but not quite narrated as an overarching dynamic that is taking us into a new phase of global capitalism – and global destruction."[161] In order to fully appreciate the connection between climate change and global capitalism, we should turn to the analysis of economic geographer David Harvey. Harvey argues that after 1970, we experienced a "new" imperial and hegemonic form of capitalist transformation.[162] He explains that one of the effective ways for capitalism to absorb excess capital today is by tearing down all global barriers to its movement—spatial and temporal (e.g., through ICT advances that enhance the credit system and state debt-financed expenditures), artificial (e.g., removal of state tariffs) and cultural (e.g., crashing popular resistance to commodification of goods and labour-power).[163] One mechanism employed by capitalism in its bid to address its problem of over-accumulation in this era of "new imperialism" is through "the deepening and widening of colonial, imperial and neocolonial practices." Hence, the twenty-first century has witnessed a renewed interest in Africa in order to compel such economies to serve the interests of the imperial hegemon and global capital.[164]

The new scramble for Africa, manifested in a repeat of land-grabbing largely through "private investor acquisitions" for profit, is a strategy to absorb this surplus capital. Huge chunks of land in Madagascar, Uganda, Sudan, Zimbabwe, Zambia, Congo, etc., have been sold off or leased to countries such as China, South Korea,

161. Saskia Sassen, "At the Systemic Edge: Expulsions," *European Review* 24(1) (2016): 89-104 at p. 89.

162. David Harvey, *The New Imperialism* (Oxford: Oxford University Press, 2003).

163. See David Harvey, "In What Ways is 'The New Imperialism" really New?" *Historical Materialism* 15 (2007): 57-70 at pp. 62-64.

164. Ellen M. Wood, *Empire of Capital* (London: Verso, 2003).

Japan, Qatar, United Arab Emirates and Saudi Arabia. Maina-Okori *et al.* remind us that "From a colonial perspective, land and the colonized (mostly Indigenous peoples) are considered part of nature and consequently objects and commodities of capitalism."[165] In 2009, the South Korean Daewoo conglomerate, for example, acquired 1.3 million hectares of land in Madagascar, representing half of the island's total arable land.[166] An Israeli pharmaceutical company is growing cannabis on land acquired in Uganda, even though marijuana is illegal in that country, even for medical purposes.[167] New demands for water and sand as well as metals and minerals used in latest electronics have also contributed to the latest scramble for Africa.[168] These emerging patterns are thanks to the growing demand for industrial crops such as palm for biofuels and the global rising food prices.[169] Not only are such practices leading to a sharp increase in mass displacements of local communities, but they are also intensifying land degradation and inevitably altering biodiversity.

Importantly, Africa has the lowest per capita ecological footprint in the world, and yet it is the most vulnerable continent to the impacts of climate change.[170] This paradox lies in the continent's beleaguered legacies of slavery, colonialism and neocolonialism.[171]

We have already seen that the colonial worldview, which is

165. Naomi Mumbi Maina-Okori, Jada Renee Koushik and Alexandria Wilson, "Reimagining Intersectionality," Note 152 at p. 291.

166. GRAIN, "Grabbing Land for Food," *Grain Seedling* (A Journal published by GRAIN), (January: 21, 2009); and A. Teyssier, L. Ramarojohn and Andrianirina R. Ratsialonana, "Des Terres pour l'agro-Industrie Internationale? Un Dilemme pour la Politique Foncière Malgache", *EchoGéo*, Numéro 11, (2010).

167. See Yasiin Mugerwa, "50 Firms Compete to Grow, export Marijuana," *Daily Monitor* (July 25, 2019).

168. Saskia Sassen, "At the Systemic Edge," Note 161 at p. 97. On sand, see Vince Beiser, *The World in a Grain: The Story of Sand and How it Transformed Civilization* (New York: Riverhead Books, 2018).

169. Saskia Sassen, Ibid. at p. 96.

170. African Development Bank, *Africa Ecological Footprint Report*, Note 155 at p. 7. Also see United Nations for UN Climate Change, *United Nations Fact Sheet on Climate Change: Africa is Particularly Vulnerable to the Expected Impacts of Global Warming*, available at: http://unfccc.int/files/press/backgrounders/application/pdf/factsheet_africa.pdf [accessed Oct 25, 2019].

171. Richard Ingwe, James Okoro and Joseph Ukwayi, "The New Scramble for Africa: How Large-Scale Acquisition of Sub-Saharan Africa's Land by Multinational Corporations and Rich Countries Threatens Sustainable Development," *Journal of Sustainable Development in Africa* 12(3) (2010): 28-50.

hegemonic and reductionist, is structured through dualisms. In other words, Western cultures conceptualize the world through opposing dichotomies. Hence, humans are categorized in direct opposition to non-humans. For analytical convenience, I use the generic term "nature" to refer to the category of non-humans, which covers flora, fauna, air, water bodies and inanimate entities. Western logic further hierarchizes dualisms, with one category always considered to be superior or dominant over the other. Thus, Whites are privileged over non-Whites, men over women and humans over nature. The last of these examples is oriented in a philosophical worldview that is deeply rooted in the arrogant principle of anthropocentrism (derived from the Greek *ánthropos* for "human" and *kéntron* for "centre"), that emphasizes human supremacy. This notion can be traced back to ancient Greece with the famous dictum declared by the philosopher Protagoras: "Man is the measure of all things."[172] It is this principle that undergirds the mass degradation of nature we are witnessing today in the modern world.[173]

Such worldview and logic is distinctly different from that shared by many non-Western societies which construct the world, not in dualisms, but in continuities. Under the nondualistic logic, which is also biocentric, humans are understood to be linked to nature, not in opposition to it.[174] As observed by Mekada Graham, "Within the cosmological perspective of the African-centred worldviews, all elements of the universe—people, animals and inanimate objects—are viewed as interconnected. Since they are dependent upon each other, they are, in essence, considered as one."[175]

The continuity in African traditional ontology is provocatively encapsulated in the Zulu expression: "I am river, I am mountain, I am tree, I am love, I am emotion, I am beauty, I am lake, I am

172. Bassey Akpan and Okpe Adie, "Eco-Communitarianism: An African Perspective," *International Journal of Advances in Scientific Research* 4(11) (2018): 88-94 at p. 89.

173. Ibid. Also see Godfrey Tangwa, "Some African Reflections on Biomedical and Environmental Ethics," in Kwasi Wiredu (ed.), *A Companion to African Philosophy,* pp. 387-395 (Malden, MA: Blackwell Publishing, 2004).

174. Biocentrism is derived from the Greek terms *bios* (life) and *kéntron* (centre), which places inherent and non-hierarchical value in all nature, including humans. It calls for a moral standard that harmonizes the existence of all forms of nature.

175. Mekada Graham, "Expanding the Philosophical Base of Social Work," in Viviene Cree (ed.), *Social Work: A Reader,* pp. 142-48 (London: Routledge, 2011) at p. 144.

cloud, I am sun, I am mind, I am one with one."[176] On his part, Na'im Akbar metaphorically likened the African cosmos to a spider web, explaining that: "its least element cannot be touched without making the whole vibrate. Everything is connected, interdependent."[177] Indeed, anthropocentric interventions on nature disrupt the healthy web of life in ways that threaten the very foundation of life itself. The underlying philosophy that informs such wisdom, one that is shared by many communities around the continent, is *Ubuntu*. For centuries, Africans have celebrated the values which connect past and present as well as humans and nature.[178] Indeed, women in the global South may not have self-identified as "ecofeminists," but they have a long history of ecological consciousness and moral obligation towards future generations. The more recent and famous examples can be seen in the women-led *Chipko* (Hindi for embrace 'the tree') movement[179] in India of the early 1970s and the women-led Green Belt Movement[180] founded in Kenya in 1977.

In the global North, French feminists were the first to coin the term *l'eco-féminisme*, (ecofeminism), linking issues of gender oppression to the phenomenon of men's domination of nature.[181]

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176. See Molefi Asante, *Kemet, Afrocentricity, and Knowledge* (Tenton, NJ: Africa World Press, 1990) at p. 83.

177. See Na'im Akbar, "Our Destiny: Authors of a Scientific Revolution," in H. McAdoo & J. McAdoo (eds.), *Black children: Social psychological and educational environments*, pp. 17-31 (Beverly Hills, CA: Sage, 1985) p. 176. Cited in Mekada Graham, "Expanding the Philosophical Base" Note 175 at p. 145. Also see Ifeanyia Menkiti, "Person and Community in African Traditional Thought," in Richard Wright (ed.), *African Philosophy: An Introduction*, pp. 171-181 (New York: University Press of America, 1984).

178. Munamato Chemhuru, "Interpreting Ecofeminist Environmentalism in African Communitarian Philosophy and Ubuntu: An Alternative to Anthropocentrism," *Philosophical Papers* 48(2) (2019): 241-264. Also see Barbara Nussbaum, "African Culture and *Ubuntu*: Reflections of a South African in America," *Perspectives* 17(1) (2003): 1-12, at p. 8. The sharpest critique of the mainstream ecofeminist movement is its essentializing and universalizing analyses that align women with nature, hence perpetuating the notion that biology determines gender inequities. Claims that women are closer to nature than men are thus viewed as regressive to the feminist cause. See Christine Cuomo, "Unravelling the Problems in Ecofeminism," *Environmental Ethics* 14 (1992): 351-363.

179. See Vandan Shiva and J. Bandyopadhyay, "The Evolution, Structure, and Impact of the Chipko Movement," *Mountain Research and Development* 6(2) (1986): 133-142; and Kumari Jawardena, *Feminism and Nationalism in the Third World* (London: Zed Books, 1986).

180. See Wangari Maathai, *The Green Belt Movement: Sharing the Approach and the Experience* (New York: Lantern Books, 2003).

181. See Françoise d'Eaubonne, *Le Féminisme ou La Mort* (Paris: Pierre Horay, 1974) at p. 221.

But the term essentially described "a new name for an ancient wisdom."[182] Ecofeminism mimics and recycles ancient African wisdom. It highlighted the commonalities between anthropocentrism and male-supremacist thinking and revealed how capitalist-patriarchal domination reduces both women and nature to "commodities." Today, there exist several strands of ecological feminist thought, but all believe that "patriarchal domination" is something that women share with nature.[183] In other words, they see an interconnection between the exploitation of women and the degradation of the environment. As feminist scholar Patricia Kameri-Mbote states, "Ecofeminists explore gender oppression and environmental degradation, mainly caused by men, and hold that women have a responsibility to stop this male domination over both."[184] Hence, ecofeminists argue that analyses of gender are critical in addressing environmental problems. "The central theme of most versions of ecofeminism," argues Stephanie Lahar, "is the interrelationship and integration of personal, social, and environmental issues and the development of multidirectional political agendas and action."[185] However, ecofeminism has been criticized for homogenizing and essentializing women, arguing, for instance, that legacies of colonialism on land policies and cultures impact African women differently from women in the global North.[186]

Before that, both Luce Irigaray and Simone de Beauvoir had articulated the idea that patriarchy "Othered" nature the same way it did women. See Luce Irigaray, *Speculum de l'autre Femme* (Paris: Les Éditions de Minuit, 1974); Simone de Beauvoir, *The Second Sex*, trans. H.M. Parshley (New York: Vintage Books, 1952) at p. 114. Cited in Trish Glazebrook, "Karen Warren's Ecofeminism," *Ethics and the Environment* 7(2) (2002): 12-26 at p. 12.

182. See Irene Diamond and Gloria Orenstein, *Reweaving the World: The Emergence of Ecofeminism* (San Francisco, CA.: Sierra Club Books, 1990).

183. See Mary Mellor, "Gender and the Environment," in Heather Eaton and Lois Ann Lorentzen (eds.), *Ecofeminism and Globalization: Exploring Culture, Context, and Religion*, pp. 11-22 (New York: Rowman & Littlefield Publishers, 2003). Also see Maria Mies and Vandan Shiva, *Ecofeminism*, (London: Zed Books, 1993).

184. Patricia Kameri-Mbote, "Access, Control and Ownership: Women and Sustainable Environmental Management in Africa," *Agenda* 21(72) (2007): 36-46 at p. 37.

185. Stephanie Lahar, "Ecofeminist Theory and Grassroots Politics," *Hypatia* 6(1) (1991): 28-45 at p. 30.

186. See e.g., Janet Muthuki, "Rethinking Ecofeminism: Wangari Maathai and the Green Belt Movement in Kenya," MA Dissertation, University of Kwazulu-Natal, 2006; and Lilian Siwila, "'Tracing the Ecological Footprints of our Foremothers': Towards an

In today's world, there has been a convergence, if somewhat unwittingly, of three separate movements: the anti-neoliberal movement (represented by climate change activists), the anti-imperialist movement (the decolonialists) and the anti-patriarchal movement (by feminists). At the confluence of the three movements is the praxis to challenge and transform power structures and hierarchies. The same imperialist ideologies and institutions that disrupted and displaced Indigenous institutions work to subjugate women and to exploit nature.

Ecofeminist theories had a lot to draw from Indigenous African ontologies and epistemologies, whose basic tenets overlap with green politics. In other words, the underlying features of ecofeminism very much resembled those traditionally practised in non-Western Indigenous cultures. In what Godfrey Tanga refers to as "eco-bio-communitarianism" and Segun Ogungbemi as the "ethics of nature-relatedness", the idea is that the complexities and slippages between the main principles of the three movements call for closer analyses.[187] It is from such pluralistic responses that we can synthesize and construct counter-hegemonic narratives for ecological sustainability and a transformational force for existing gender/power relations.

Africa's ecocentric worldview was, rather obtusely, acknowledged by the world in 2004 when Kenyan feminist Wangari Maathai was awarded the Nobel Peace Prize for her contribution to sustainable development, democracy and peace. The epistemic relationship between Indigenous people and nature manifests through their spirituality, clan totems, taboos, ancestral myths, rituals, fables, and so forth.[188] These complex sets of traditional beliefs and practices effectively governed the conduct of Indigenous communities. Indeed, they constituted self-enforcing institutions that did not require a state to regulate or compel submission. The detailed

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African Feminist Approach to Women's Connectedness with Nature," *Studia Historiae Ecclesiasticae* 40(2) (2014): 131-147.

187. See Godfrey Tangwa, "Some African Reflections on Biomedical and Environmental Ethics," in Kwasi Wiredu (ed.), *A Companion to African Philosophy* pp. 387-395 (Oxford: Blackwell Publishers, 2004); and Segun Ogungbemi, "An African Perspective on the Environmental Crisis," in Louis Pojman (ed.), *Environmental Ethics: Readings in Theory and Application*, pp. 330-337 (Belmont, CA: Wadsworth Publishing Co., 1997).

188. Lilian Siwila, "'Tracing the Ecological Footprints of our Foremothers'," Note 186.

autobiographical account below shared by Wangari Maathai clearly demonstrates the nexus between tradition, environmental knowledge and what one may refer to as *Ubuntu* morality; Alice Walker would certainly describe her as an "ecowomanist":[189]

> *I was born in the rural areas of Kenya, in the central highlands. My community is the Kikuyu. And one of the things that I may have inherited without being conscious about it… is the fact that my people were very close to nature.*
>
> *I like to give a story, for example, that reflects that: that when I was a young child, I used to collect the firewood for my mother. I remember my mother telling me not to collect any firewood from this tree called a fig tree, the so-called strangler fig tree. And when I asked her why not, she told me, "That is a tree of God. We don't cut it. We don't burn it. We don't use it. They live for as long as they can, and they fall on their own when they are too old."*
>
> *Now, I didn't think much about that until much, much later. Indeed, when I became environmentally conscious, I remembered that story. I also recognized that in the period of, maybe, between 1920s to 1960s, a lot of those fig trees had actually been cut, because, having become Christians, the missionaries were very eager to get rid of all these trees that reminded the natives of a god that they did not relate to, because they needed to relate to another god, and this new god was a god who was worshipped in a house called church. But the god they were relating to prior to that was a god that they worshipped under these trees, such as that fig tree. Not every one of them, but they definitely were among the sacred trees…*
>
> *Well, the point I want to emphasize here is, these trees, because they are so huge and because they were never cut, they actually provided stabilization of the land, because these are highlands. They protected these people from landslides…*
>
> *They physically protected the land from sliding because it's so steep. And because they have roots that go very deep, and, as I say, because they are not cut, they last forever. They are able to go down into the underground rock. They are able to break the rock, and they are able to bring some of the subterranean water system up nearer to the surface, and so they were responsible for many of the streams that dotted the landscape. So in many ways, therefore, they*

189. For a detailed analysis of Alice Walker's conceptualization of "Ecowomanism" see Martin Delveaux, "Transcending Ecofeminism: Alice Walker, Spiritual Ecowomanism, and Environmental Ethics," University of Exeter, UK, available at: www.ecofem.org/journal [accessed October 24, 2019].

were part of the water system in the area, and so they served a very important purpose.[190]

Maathai's anecdote directly implicates colonialism not only in destroying Africa's religions, but also in obliterating the complex ecological systems of the Indigenous people. The reference point for Afro-ecofeminism is its rich heritage and vibrant Indigenous cultures. African organizations such as African Women Unite Against Destructive Resource Extraction (WoMin) and the African Eco Feminist Collective also use radical and African feminist traditions to challenge patriarchy and neo-colonialism.[191]

Notably, the consequences of violating a taboo were not individualized and responsibility to conform was communalist. If you transgressed social taboos, your relatives would also suffer the consequences. Knowledge, in most African societies which are integration-based, is derived from tradition. Another example can be seen in the traditional practices among the Bakusu of western Kenya as reported by Sylvia Wasike: "The forest/sacred groves/trees are regarded as the spiritual home for the ancestors and more importantly a place where special species of trees for carving representing the gods for sacrifices at home are found. Hence, through taboos, totems and other management practices, sacred trees/groves and plants are protected from exploitation."[192] Celia Nyamweru reinforces this trend in her study of the sacred groves (called the *Kaya* forests) among the Mijikenda people of coastal Kenya. To this day, these forest groves are considered by the community as the source of their cultural essence and moral safeguard against cultural colonization. The *Kaya* are conserved by semi-secret societies within the community that hold the medicinal

190. Interview with Krista Tippett *On Being Podcast*, (April 6, 2006), Transcript available at: https://onbeing.org/programs/wangari-maathai-marching-with-trees/ [accessed October 23, 2019].

191. Fatimah Kelleher, "Why the World Needs an African Ecofeminist Future," Note 153. Also see Mela Chiponda, Dorothy Guerrero and Samantha Hargreaves, *Women Building Power: Towards Climate and Energy Justice for Women in Africa*, (Johannesburg: WoMin African Gender and Extractives Alliance, 2016). Available at: https://womin.org.za/images/women-building-power/Women Building Power Paper Towards Climate and Energy Justice.pdf [accessed Jan 14, 2020].

192. Sylvia Wasike, "Challenges Facing Women in Accessing and Controlling Natural Resources in Tuuti Ward, Bungoma County in Western Part of Kenya," Unpublished MA Thesis, University of Nairobi, (November 2014) at p.38.

secrets of the *Kaya*. The groves are also prayer sites where rituals of cleansing as well as disaster-diversion are performed.[193] Hence, traditional non-Western attitudes towards nature were characterized by respectful co-existence, conciliation and containment.[194] This is in direct contrast to the way Western cultures sacrifice nature at the altar of capitalism and imperialism.

Ecological moral allegories abound in African culture.[195] The genre of the novel has also played a very important role in preserving African oral narratives, including ecocritical approaches. For example, Nasiru Muhammad analyzes African classics such as Ngugi wa Thiong'o's *Petals of Blood* and *Wizard of the Crow*, Chinua Achebe's *Girls at War* and *Anthills of the Savannah*, Abubakar Gimba's *Witnesses to Tears and Sacred Apples*, to show how they depict how "neocolonial misadventures in the continent have exposed both the environment and women to excessive exploitation."[196]

The political potency of ecofeminism lies in its ability to maintain a balance between the principles of feminism, green politics and Indigenous ontologies; to learn how to walk the fine line between utilizing nature's resources while protecting them.[197] Patricia Kameri-Mbote asserts that, "Gender mediates environmental encounter, use, knowledge and assessment as gender roles, responsibilities, expectations, norms and the division of labor shape all forms of human relationships to the environment."[198]

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193. Celia Nyamweru, "Women and Sacred Groves in Coastal Kenya: A Contribution to the Ecofeminist Debate," in Heather Eaton and Lois Ann Lorentzen (eds.), *Ecofeminism and Globalization: Exploring Culture, Context, and Religion*, pp. 41-56 (New York: Rowman & Littlefield Publishers, 2003). Also see Lilian C. Siwila, "'Tracing the Ecological Footprints of our Foremothers'," Note 186.

194. See Godfrey Tangwa, "Some African Reflections on Biomedical and Environmental Ethics," in Kwasi Wiredu (ed.), *A Companion to African Philosophy* (Oxford: Blackwell Publishers, 2004); and Philomena Ojomo, "An African Understanding of Environmental Ethics," *Thought and Practice: A Journal of the Philosophical Association of Kenya* 2(2) (2010): 49-63.

195. Lilian C. Siwila, "'Tracing the Ecological Footprints'," Note 186.

196. See Nasiru U. Muhammad, "Reinterpreting Female Identity in Selected African Male Writers through Ecofeminism," Unpublished PhD Dissertation, Universiti Putra Malaysia, (May 2017) at p. i.

197. See Ynestra King, "Healing the Wounds: Feminism, Ecology, and Nature/Culture Dualism," in Alison M. Jaggar & Susan Bordo (eds.), *Gender/Body/Knowledge: Feminist Reconstructions of Being and Knowing*, pp. 115-141 (New Brunswick, NJ: Rutgers University Press, 1989).

198. Patricia Kameri-Mbote, "Access, control and ownership," Note 184 at p. 39.

Stephanie Lahar also reminds us that ultimately, "The purpose of working out an integrated philosophy of humanity and nature is not only to challenge dualisms to reflect more clearly our lived experience in theory but also to describe relations among women, men, society, and nonhuman nature in a way that is conducive to a high quality of life and antithetical to oppression and exploitation."[199]

In order to truly transcend the dualistic anthropocentric culture of patriarchal-capitalism, I would add to Lahar's integrative philosophical list of humanity and nature, Indigenous knowledge systems. It is in this spirit that I end this chapter with part of a selected "re-memorying" nature poem by the South African feminist poet Malika Ndlovu as a healing tribute and way of affirming the African ecofeminist poetic fractured by colonialism.[200] The extract is from her poem, "Lydia in the Wind."

> *This wind is a wounded witness*
> *she will not be still*
> *not until we are listening*
>
> *Are we listening*
>
> *Will we recognise her*
> *circling the crevice between two worlds*
> *our reality and hers howling around this empty plot*
> *this hole in our history.*[201]

199. Stephanie Lahar, "Ecofeminist Theory and Grassroots Politics," Note 185 at p. 38.

200. The concept "re-memory" was famously coined by Toni Morrison, in her 1987 novel *Beloved*, to invoke remembering as a way of healing traumatic events through narrative memory. For a full analysis of Malika Ndlovu's ecofeminist poetic, see Barbara Boswell, "Re-memory and an African Ecofeminist Poetic of Healing in Malika Ndlovu's Poetry," *Scrutiny 2*, 16(2) (2011): 32-41.

201. Malika Ndlovu, *Born in Africa But…* (Cape Town: Educall Publishers, 2000) at pp. 25-26.

4

Challenging the Coloniality of Sex, Gender and Sexuality

Am me and am happy to be me
The world went rough on me but I didn't change of being me.
They call names, bitch, slight whore, isitabane
But I kept going and stronger day by day
Who are you to tell me what I am
If you don't like what you see, Phuma Kimi!
—Modise[1]

As is the situation elsewhere around the world, African identities and ways of being are fundamentally influenced by the core concepts of sex, gender and sexuality. These three interrelated concepts are further complicated when they intersect with ideas relating to constructs such as race, ethnicity, nationality, age and religion. Despite this reality, most of us are not consciously aware of the subtle, multidimensional and infinite ways that coloniality shapes our understandings of these aspects of our lives. The Indigenous knowledge which governed these aspects of African lives were unsettled, altered and delegitimized through processes of

1. Untitled, extract by Modise from Eastern Cape, South Africa. Posted on November 12, 2015 at: https://weareallpoets2015.wordpress.com/2015/11/12/untitled-by-modise/ [accessed on January 19, 2020].

colonialism and imperialism.[2] Today, European global domination has an ironclad hold on our ways of thinking, feeling and being; hence it shapes our positionality in the world.[3]

The aim of this chapter is to surface many of those taken-for-granted norms and assumptions that underlie the social institutions of sex, gender and sexuality in Africa. In particular, it challenges and problematizes the naturalized, normative modes of thinking about these three concepts. Doing so will help relocate the power that operates through these aspects of our lives, a particularly important goal in achieving Africa's transformative agenda of decolonization/decoloniality.

The postcolonial conceptualization of "coloniality of Being" which refers to the ways that our "common sense" understandings of being and knowing reflect processes of internalized colonization.[4] Eurocentred colonialism was replaced with Eurocentred coloniality. It is the same phenomenon that Zulu Sofola described back in 1993: "It is and has been an automatic position taken by Western scholars and some Africans of European orientation, that the Eurocentric perception and definition of life is all that is and all that should be."[5]

Nelson Maldonado-Torres points out that coloniality of Being becomes most visible and concrete when we encounter *liminal* persons, that is, humans who are culturally ambiguous; those that cannot be easily classified into dichotomized and "naturalized"

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2. See e.g., Anne McClintock, *Imperial Leather: Race, Gender and Sexuality in the Colonial Contest* (New York: Routledge, 1995); Sylvia Tamale (ed.), *African Sexualities: A Reader* (Oxford: Pambazuka Press, 2011); Barbara L. Voss and Eleanor Conlin Casella, (*eds.*), *The Archaeology of Colonialism: Intimate Encounters and Sexual Effects* (Cambridge: Cambridge University Press, 2012); Marc Epprecht, *Heterosexual Africa? The history of an Idea from the Age of Exploration to the Age of AIDS* (Athens: Ohio University Press, 2008); Zine Magubane, *Bringing the Empire Home: Race, Class and Gender in British and Colonial South Africa* (Chicago: University of Chicago Press, 2004); and Nkolika Ijeoma Aniekwu, "Converging Constructions: A Historical Perspective on Sexuality and Feminism in Post-Colonial Africa," *African Sociological Review* 10(1) (2006): 143-160.

3. Frantz Fanon, *The Wretched of the Earth* (New York: Grove Weidenfeld, 1963); and Achille Mbembe, *On the Postcoloniality* (Berkeley: University of California Press, 2001).

4. See Walter Mignolo, *The Darker Side of the Renaissance: Literacy, Territoriality, and Colonization*, 2nd ed. (Ann Arbor: University of Michigan Press, 2003); Nelson Maldonado-Torres, "On the Coloniality of Being: Contributions to the Development of the Concept," in Walter Mignolo and Arturo Escobar (eds.), *Globalization and the Decolonial Option*, pp. 94-124 (London: Routledge, 2010).

5. Zulu Sofola, "Foreword," in Clenora Hudson-Weems, *Africana Womanism: Reclaiming Ourselves*, (Troy, MI.: Bedford Publishers, 1993) at p. xvii.

social categories that coloniality has constructed for us. Elizabeth Reis refers to them as "bodies in doubt."[6] Such bodies have been well documented in African traditions. Among the Langi in northern Uganda there is an alternative gender known as *mudoko dako*.[7] These "effeminate males" are allowed to marry men. The fact that the usual "common sense" sex markers would fail to classify *mudoko dako* clearly points to the limitations within the colonial knowledge system to understand humanity outside the constructed binaries of male/female.[8] Similarly, the Imbangala of Angola shocked English traveller Andrew Battell in the 1590s when he discovered that "they have men in women's apparel, whom they keepe among their wives."[9] In other words, the appearance of humans like *mudoko dako* marks "the limit of Being, that is, the point at which Being distorts meaning…"[10]

Following the cue provided by Maldonado-Torres, this chapter discusses the well-known stories of two liminal subjects to demonstrate the complexities involved in decolonizing our everyday understandings of sex, gender and sexuality. Which better place to look than the stage of elite sports where the world gaze is ever-present, and scrutiny is constant and uncompromising. It is the world in which two iconic athletes—Caster Semenya and Michael Phelps—occupy and have been the subject of particular scrutiny with respect to issues that implicate our notions of gender and sexuality.

The analysis in the sections that follow begins with a brief account of the similarities and differences between Phelps and Semenya, focusing particularly on their physicality. Then, the chapter provides a brief discussion of African sex/gender systems which markedly differ from those in Western ideologies. Next,

6. Elizabeth Reis, *Bodies in Doubt: An American History of Intersex* (Baltimore: John Hopkins University Press, 2009).

7. Jack Driberg, *The Lango: A Nilotic Tribe in Uganda* (London: Thorner Coryndon, 1923).

8. An equivalent term among the Hausa in northern Nigeria is *yandaudu*. See Stephen Murray and Will Roscoe (eds.), *Boy-Wives and Female Husbands: Studies in African Homosexualities* (New York: Palgrave, 1998).

9. Samuel Purchas, "Strange Adventures of Andrew Battell of Leigh of Essex," in *Purchas His Pilgrimage*, Vol. 6 (Glasgow: J. Maclehose & Sons, 1905 [1613]) at p. 74. Cited in Marc Epprecht, "'Bisexuality' and the Politics of Normal in African Ethnography," *Anthropologica* 48(2) (2006): 187-201 at p. 189.

10. Nelson Maldonado-Torres, "On the Coloniality of Being," Note 4 at p. 111.

through a discursive intersectional analysis of the public discourse on Phelps and Semenya, we reveal the hidden power behind the written word (and the silences). As Semenya was subjected to scientific and legal inquiries, we examine their implications and discuss the role of science and the law in the social construction of gender and power relations in the final section. Which systems of power are salient and intersecting? Are any matrices of resistance visible in the stories of the two athletes? What is the *real* meaning behind the public discourses on the two athletes? How do the different texts talk to each other? What kinds of hidden values or power do they carry—hegemonic? subversive? colonial?

Michael Phelps and Caster Semenya: A Juxtaposition

The appearance of the two enigmatic athletes Caster Semenya and Michael Phelps onto the global elite sports stage, in many ways, unsettled the sports industry and the normative ways of thinking. They certainly opened the floodgates of public opinion and spectacularization. While the "body-scape" of both athletes is a source of confusion to the gazing public, the treatment that each was subjected has been quite different. Their juxtaposition, therefore, provides a useful basis for analysing the coloniality of Being and linking it to knowledge production relating to sex, gender and sexuality.

Implicated in this discussion are Michel Foucault's key concepts of subjectivity, discourse and power. Foucault insists that power shapes and legitimates knowledge, just as knowledge facilitates the exercise of power.[11] He reminds us that "discourses are composed of signs; but what they do is more than use these signs to designate things… It is this 'more' that we must reveal and describe."[12] The public discourses about the two athletes dramatically reveal power/knowledge in operation. This echoes Chinua Achebe's writing about the power embedded in stories and his call for critical Africans to

11. Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977* (New York: Pantheon Books, 1980).

12. Michel Foucault, *The Archaeology of Knowledge*, Trans. Alan Sheridan (New York: Harper & Row, 1976 [1969]) at p. 49.

"re-story" ourselves.[13] By analyzing the public discourse on Semenya and Phelps, we hope to surface the power relationship between language, social institutions and subjectivity. Semenya's case further reveals how legal and scientific discourses produce and reproduce power relations. The conceptual link between knowledge and language is further explicated by Walter Mignolo: "Science (knowledge and wisdom) cannot be detached from language; languages are not just 'cultural' phenomena in which people find their 'identity'; they are also the location where knowledge is inscribed. And, since languages are not something human beings have but rather something of what human beings are, coloniality of power and of knowledge engendered the coloniality of being…"[14]

The tool of intersectionality is deployed in a bid to appreciate the complex ways that the sex/gender system and sexuality are shaped by and are constitutive of nationality, race and class. The similarities and differences between the two athletes provide a fertile ground for analyzing intersecting systems of power, privilege and oppression. Hence, via the discursive analysis of the stories of and about Semenya and Phelps, we hope to demonstrate the role of discourse in constructing colonial ways of Being. Using broad brush strokes to map out simple biographical descriptions of Michael Phelps and Caster Semenya as well as the outline of the areas of discourse on their physicality, this section lays the backdrop against which to identify ways in which coloniality shapes sex/gender and sexuality. The focus is mostly on their physicality as the public and the official establishment are obsessed with their bodies and their bodily functions as athletes.

There are a few key similarities that Phelps and Semenya share. Both are successful elite athletes who have competed in world and regional championships, including the Olympics, setting world records in their respective sports. Semenya is a middle-distance runner while Phelps is a swimmer. Semenya has thrice won gold medals at the women's 800-metre race in the World Championships of the International Association of Athletics

13. Chinua Achebe, "Today, the Balance of Stories," in *Home and Exile* (New York: Anchor, 2000), pp. 73-105.

14. Walter Mignolo, *The Darker Side of the Renaissance*, Note 4 at p. 452.

Federations (IAAF) and twice in the 2012 and 2016 Olympics.[15] Phelps holds an impressive total of 28 Olympic medals (23 of which are gold), setting the world record for most medal wins of an Olympic athlete in history.[16]

Semenya and Phelps are contemporary athletes as they were both at the Olympics in London (2012) and Rio de Janeiro (2016). This means that both of them were subjected to the Olympic Charter and the IAAF Constitution which explicitly prohibit discrimination of any kind. Article 4(4) of the IAAF Constitution specifically states in its objectives that it strives: "to ensure that no gender, race, religious, political or other kind of unfair discrimination exists, continues to exist, or is allowed to develop in Athletics in any form, and that all may participate in Athletics regardless of their gender, race, religious or political views or any other irrelevant factor."[17] Both sports stars have unique physicality that cannot easily be classified as "normal" or "natural" under hegemonic cultural standards. Their bodies exist in a liminal space. For this reason, the world spotlight and intrusive gaze has been fixed on their biological makeup, and ultimately, for Semenya, her gender identity and sexuality. The dominant discourse on both athletes constructs them as human "freaks" based on their bodily physiques.

Valery Siebert provides a detailed description of Michael Phelps' physique. He has a relatively thin and long torso, which offers low drag in the water as do his relatively short legs and broad shoulders; his 6-foot-7-inch arm span, which is disproportionate to his height of 6-foot-4-inches, acts as long, propulsive paddles; and his large size-14 feet and larger-than-average hands provide the effect of powerful flippers; the double-jointed elbows allow him much more thrust into the water than the average swimmer; his double-jointed ankles are super strong and so flexible that they can go parallel to his shin beyond the point of a ballet dancer, which allows him to

15. See NBC Sports, "Caster Semenya will not attend world championships to receive gold medal" (Sept 12, 2019), available at: https://olympics.nbcsports.com/2019/09/12/caster-semenya-world-championships-gold-medal/ [accessed Dec 17, 2019].

16. See Brittanica, "Michael Phelps," available at: https://www.britannica.com/biography/Michael-Phelps [accessed Dec 17, 2019].

17. See Objective 4 of the 2017 Constitution of the International Association of Athletics Federations (IAAF).

use them like fins for maximum thrust through the water.[18] Some suggest that Phelps has a genetic condition known as Marfan syndrome, which affects a person's connective tissue.[19] It has also been scientifically proven that Phelps produces less than half of the lactic acid that an average person produces, allowing him less recovery time between exertions and more powerful lungs.[20]

In contrast, Semenya's physical appearance or phenotype resembles that of a stereotypical male. With a broad chest and relatively deep voice, some describe her as "butch."[21] A battery of tests imposed by the IAAF indicated that she had "an intersex condition that left her without a uterus or ovaries and with undescended testes producing androgens at three times the typical level for females."[22] Apparently, the physicality of both athletes gives them an advantage over their competitors.

The differences between Semenya and Phelps generally fall under the constructs of gender, race, class and nation. Born on January 7, 1991, Caster Semenya is the child of relatively poor Sepedi parents in the rural village of Ga-Masehlong, located in Limpopo province, South Africa. She was assigned the female gender at birth and was raised a female.[23] On the other hand, Michael Phelps, is male and

18. Valery Siebert, "Michael Phelps: The Man who was Built to be a Swimmer," *The Telegraph*, (25 April, 2014), available at: https://www.telegraph.co.uk/sport/olympics/swimming/10768083/Michael-Phelps-The-man-who-was-built-to-be-a-swimmer.html [accessed Nov 15, 2019].

19. Emily J. Cooper, "Gender Testing in Athletic Competitions – Human Rights Violations: Why Michael Phelps is Praised and Caster Semenya is Chastised," *Journal of Gender, Race & Justice* 14(1) (2010): 233-264.

20. Ibid. Also see, Michael Sokolove, "Built to Swim," *New York Times* (Aug 08, 2004), available at: https://www.nytimes.com/2004/08/08/magazine/built-to-swim.html [accessed Nov 15, 2019].

21. See e.g., Ariel Levy, "Either/Or: Sports, Sex, and the Case of Caster Semenya," *New Yorker* (Nov 30, 2009), available at https://www.newyorker.com/magazine/2009/11/30/eitheror [accessed Nov 19, 2019].

22. Katrina Karkazis, Rebecca Jordan-Young, Georgiann Davis and Silvia Camporesi, "Out of Bounds? A Critique of the New Policies on Hyperandrogenism in Elite Female Athletes," *The American Journal of Bioethics* 12(7) (2012): 3-16 at p. 4. The range of testosterone for females is 0.7 to 2.8 nmol/L and for males, 6.9 to 34.7 nmol/L. Also see Simon Hart, "Caster Semenya 'is a Hermaphrodite', Tests Show," *Daily Telegraph*, (September 11, 2009). Available at: https://www.telegraph.co.uk/sport/othersports/athletics/6170229/Caster-Semenya-is-a-hermaphrodite-tests-show.html [accessed Nov 22, 2019].

23. South African History Online, "Mokgadi Caster Semenya" (15 August, 2017), available at: https://www.sahistory.org.za/people/mokgadi-caster-semenya [accessed Nov 20, 2019].

born on June 30, 1985 to a White middle-class family located in Baltimore, USA.[24]

The main distinction in the career trajectories of Semenya and Phelps relates to their relationship with the IAAF. For one, it involves an action and for the other, a case of inaction. Following her 2009 victory in the Berlin World Championships, the IAAF subjected Semenya to a "gender verification" test for the purpose of verifying her "true" sex. This was based on Semenya's physique, voice tone and her "rapid improvement" in speed. The scientific tests included screening for high testosterone and physical examination of her intimate body parts such as measurement of the size of her clitoris. Test results revealed that she had elevated androgen levels (hyperandrogenism).[25] The IAAF reported that they wanted to ensure that Semenya did not have an advantage over other female athletes based on her "difference."[26] Phelps, on the other hand, despite his unique physique, has never been constrained—either by the International Olympic Committee (IOC) or the IAAF—to undergo any medical or physical tests. And if any tests were done, they have never been used in a decision regarding the athlete's official performances.

Additionally, as a female, Semenya is governed by the 2017 IAAF Eligibility Regulations for the Female Classification (Athletes with Differences of Sex Development)—hereinafter referred to as the DSD Regulations—which came into force on August 11, 2019. Men, including Phelps, are not subjected to any such tests, but female athletes whose sex is questioned must undergo the tests. Semenya was found to be eligible for the tests. The guidelines for eligibility are not clear and remain subjective. Marthe de Ferrer highlights the lack of guidelines for determining which female athletes would be eligible for testing: "In 2011 the IAAF were criticised for saying that [they] would use a range of stereotypical measures – such as having a low voice – to decide who they would subject to sex testing. They have since removed that category, but they have yet to confirm

24. Michael Phelps, *Beneath the Surface: My Story* (New York: Sports Publishing, 2016).

25. Emily J. Cooper, "Gender Testing in Athletic Competitions," Note 19.

26. See Arbitral Award in the case of *Mokgadi Caster Semenya v. International Association of Athletes Federation* and *Athletes South Africa v. International Association of Athletes Federation*, available at: https://www.tas-cas.org/fileadmin/user_upload/CAS_Award_-_redacted_-_Semenya_ASA_IAAF.pdf [accessed Nov 15, 2019] at para. 287.

how they will decide which athletes they are testing. The IAAF regulations are founded in the misguided notion that sport is about fairness."[27]

Together with Athletics South Africa (ASA), Semenya filed a case at the Court of Arbitration for Sports (CAS) against the IAAF, challenging her "gender verification" DSD test as discriminatory on the basis of sex. They lost the case and, as a result, Semenya was ordered by IAAF to reduce her testosterone levels through hormonal therapy in order to qualify for the women's races. Semenya and ASA have appealed this decision, which is still under consideration at the time of writing.

Given the above account, it is clear that there are some factual similarities and a number of fundamental differences between Semenya and Phelps. What they share in common is that both are contemporary Olympic athletes whose bodies defy conventional understandings and challenge the normative colonial logics regarding the human body. Beyond that, the two inhabit very different worlds, particularly in terms of race and class. Indeed, there is a world of difference in their sporting experiences. Discourses imposed on Phelps and Semenya by the public and other external entities are also quite different. African and Western conceptualizations of the sex/gender system are different in this respect, a point that I consider in the next section.

Decolonial African Sex/Gender Systems

The previous chapter discussed colonial impositions on Africa of paradigms that are founded on polarized dualisms. This is how the dual sex/gender system took over African Indigenous arrangements and understandings of gender which were more pluralistic, elastic and accommodating. Historically, the organization of gender in many African societies was not necessarily arranged along heterosexual or patriarchal lines as we have learnt them through colonial conceptualizations. African-

27. Marthe de Ferrer, "'The ignorance is mindblowing'– why the Caster Semenya ruling hurts millions of people like me," *Manchester Evening News* (May 6, 2019), available at: https://www.manchestereveningnews.co.uk/news/news-opinion/the-ignorance-mindblowing-caster-semenya-16224157 [accessed Nov 17, 2019].

American scholar Clenora Hudson-Weems offers a paradigm for understanding African experiences of gender.[28] Rooted in afro-centric ideology, "Africana womanism" examines the interplay of the institution of gender and interpersonal relations as embedded in and influenced by race, capitalism and Judeo-Christian ethics. It offers women of African descent a strategy to theorize their own existence.

Ifi Amadiume's excellent study of Indigenous Igbo gender arrangements in southeastern Nigeria clearly demonstrates that orthodox Western sex/gender conceptions do not resonate with many of the realities on the African ground. Indeed, they unsettle mainstream Western feminist universalizations of gender. Amadiume introduces concepts such as "male daughters" and "female husbands" which were strange to Western feminism and to hegemonic gender paradigms based on polarized dualisms.[29] The point that Amadiume accentuates is that "bio-logical" sex did not always correspond to ideological gender in African societies. Moreover, because the gender system was relatively flexible, it was not unusual for women to play "male" roles "in terms of power and authority over others" because roles "were not rigidly masculinized or feminized [and] no stigma was attached to breaking gender rules."[30]

British colonial administrator Lord Frederick Lugard, viewing woman-to-woman marriages in West Africa through Eurocentric lenses, declared them "not normal" and recorded them in his book, *The Dual Mandate in British Tropical Africa*, under the title, "Slavery in British Africa."[31] Of course, such marriages were "not normal" in his European experience and his classic patriarchal mind could not fathom a woman marrying another woman, hence describing it as slavery. Oxford University Anthropology Professor Evans-Pritchard was also puzzled by the phenomenon. In 1951 he wrote about the

28. Clenora Hudson-Weems, *Africana Womanism: Reclaiming Ourselves* (Troy, MI: Bedford Publishers, 1993).

29. Ifi Amadiume, *Male Daughters, Female Husbands: Gender and Sex in an African Society* (London: Zed Books, 1987).

30. Ibid. at p. 185.

31. Frederick Lugard, *The Dual Mandate in British Tropical Africa* (1922) cited in Kirsten Kjerland, "When African Women Take Wives: A Historiographical Overview," *Poverty and Prosperity* Occasional Paper No. 6 (1997): 1-21.

Nuer of South Sudan: "What seems to us, but not at all to Nuer, a somewhat strange union is that in which a woman marries another woman and counts as the pater [father] of the children born of the wife. Such marriages are by no means uncommon in Nuerland, and they must be regarded as a form of simple legal marriage, for the woman-husband marries her wife in exactly the same way as a man marries a woman."[32] Gender flexibility and gender bending existed in many other African societies. For example, woman-to-woman marriages have been documented in more than thirty African societies, including the Nandi, Kikuyu, and Luo of Kenya, the Nuer of South Sudan, the Kuria in Tanzania, the Fon in Dahomey (present-day Benin), the Fanti of Ghana, the Thonga of Zimbabwe, the Konso and Amhara of Ethiopia, the Ottoro of Nubia, the Tanala and Bara of Madagascar, the Wolof of Senegal, the Kwayama and Ovimbundu of Angola and the Venda of South Africa.[33] Edmund Leach also noted the practice among the people of the Siwah Oasis in Western Egypt.[34] There is a wide variety of such relationships, including those which could be described as transgenerational and transgenderal (for lack of a better term).[35] In all these relationships, bridewealth is exchanged, which makes them legitimate marriages. Moreover, such Indigenous systems have persisted to the present day.

Woman-woman marriages are usually undertaken for reproductive, economic and diplomatic reasons, for example, well-to-do women who cannot have children of their own for biological reasons. Or it could be a woman whose offspring consists of only

32. E. E. Evans-Pritchard, *Kinship and Marriage Among the Nuer* (Oxford: Clarendon Press, 1951) at p. 108.

33. See e.g., Edward Evans-Pritchard, *Kinship and Marriage among the Nuer* (Oxford: Oxford University Press, 1951); Denise O'Brien, "Female Husbands in Southern Bantu Societies," in A. Schlegel (ed.), *Sexual Stratification: A Cross-Cultural View*, pp. 109-126 (New York: Columbia University Press, 1977); Stephen Murray and Will Roscoe (eds.), *Boy-Wives and Female Husbands: Studies in African Homosexualities* (New York: Palgrave, 1998); Melville Herskovits, "A Note on 'Woman Marriage' in Dahomey," *Africa* 10 (1937): 335-341; Judith Gay, "'Mummies and Babies' and Friends and Lovers in Lesotho," *Journal of Homosexuality*, 11(3/4) (1986): 97-116; Louis Leakey, *The Southern Kikuyu Before 1903* (New York: Academic Press, 1977 [1938]); and David Greenberg, *the Construction of Homosexuality* (Chicago: University of Chicago Press, 1988).

34. See Edmund Leach, "Marriage, Legitimacy, Alliance," *Social Anthropology* 176 (1982) at 210, cited in William Eskridge, "A History of Same-Sex Marriage," *Virginia Law Review* 79(7) (1993): 1419-1513 at 1459.

35. William Eskridge, Ibid. at p. 1458.

daughters. Such a woman will marry a younger woman who will take on male lovers and produce children for her female "husband."[36] Thus, the family lineage of her male husband in the patrilineal context will be secured. Lonely widows have also been known to marry female partners.[37] But the reasons for such marriages went far beyond functionalist purposes usually reported in the literature. In their 2000 article, "Revisiting 'Woman-Woman Marriage': Notes on Gikuyu Women," Wairimu Njambi and William O'Brien suggest more nuanced and complex reasons, as captured in the words of one participant in their study: "I ask myself, 'What is it that women who are married to men have that I don't have? Is it land? I have land. Is it children? I have children. I don't have a man, but I have a woman who cares for me. I belong to her and she belongs to me. And I tell you, I don't have to worry about a man telling me what to do."[38]

Njambi and O'Brien critique the very concept of "female husband" for its potential to conjure up the idea that gender concepts are interchangeable or unrestricted; on the contrary, the women in woman-woman marriages do not equate their roles to maleness.[39] They conclude that: "By marrying women, these Gikuyu women are clearly radically disrupting the male domination that operates in their everyday lives. Their stories may begin with land and struggles over material resources, but they are also stories of love, commitment, children, sexual freedom, vulnerability, and empowerment."[40] In the same way, many African grammatical constructions of gender make no distinction between male and female pronouns, which allows for "a more flexible semantic system, in which it is possible for men and women to share attributes."[41]

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36. Ifi Amadiume, *Male Daughters, Female Husbands*, Note 29.

37. Wairimu Njambi and William O'Brien, "'Woman-Woman Marriage': Notes on Gikuyu Women," *NWSA Journal* 12(1) (2000): 1-23.

38. Ciru, married to Nduta. Ibid. at p. 1.

39. Also see Eileen Jensen Krige, "Woman-Marriage, with Special Reference to the Lovedu—Its Significance for the Definition of Marriage," *Africa* 44 (1974):11-37.

40. Ibid. at p. 19.

41. Ifi Amadiume, *Male Daughters, Female Husbands*, Note 29 at p. 89; and Oyeronke Oyewumi, *The Invention of Women: Making an African Sense of Western Discourses* (Minneapolis: University of Minnesota Press, 1997). This is also true for my own mother tongue, Luganda.

Whether woman-woman marriages have a sexual/erotic dimension to them remains an open question. Several studies indicate that some of them exhibit deep emotional ties and hints of intimate relations.[42] It would be unlikely that the erotic aspects of this relationship would be readily discussed with "outsider" researchers. Caution should be exercised in using Western conceptualizations of homosexuality onto same-sex desire in African contexts. Colonial notions of "sexual bodies" and "desire" differ quite distinctively from African ones. Serena Dankwa eloquently captures the nuanced differences from her study of homo-erotics in Ghana:

> …first, southern Ghanaian cultures draw on norms of verbal indirection and discretion, which allow for the concealment of non-normative sexual conduct. Secondly, homosocial spaces of intimacy provide an environment in which female same-sex bonds are expressed through a language of allusion rather than a specialist, subcultural vocabulary. Erotic context is formed through practice and performance and is not discursively named or understood as a social identity. Rather, these understandings of female same-sex passions revolve around the notion of secrecy and are based on tacit but vibrant forms of knowledge.[43]

Coloniality of Being would account for the more recent conceptualizations of same-sex desires within the Western identity politics of gay and lesbian. Political activism in Africa that coalesces around homosexual *identities* or any of the other identities that make up the LGBTIQ alphabet originates from concepts that evolved outside the continent. While they may carry similar experiences, their nuanced application and relevance to Indigenous experiences may not necessarily mirror those of their colonial contexts. Indeed, Indigenous conceptualizations of same-sex

42. E.g., see Wairimu Njambi and William O'Brien, "'Woman-Woman Marriage', Note 37; Eileen Jensen Krige,"Woman-Marriage, with Special Reference to the Lovedu," Note 39; Christine Obbo, "Dominant Male Ideology and Female Options: Three East African Case Studies," *Africa* 46(4) (1976): 371-89; Joe Carrier, "Some Comments on Woman/Woman Marriage in Africa," *Anthropological Research Group on Homosexuality Newsletter* 2(3) (1980): 2-4; and Chantal Zabus, "Of Female Husbands and Boarding School Girls: Gender Bending in Unoma Azuah's Fiction," *Research in African Literatures* 39(2) (2008): 93-107.

43. Serena Dakwa, "'It's a Silent Trade': Female Same-Sex Intimacies in Post-Colonial Ghana," *Nordic Journal of Feminist and Gender Research* 17(3) (2009): 192-205, at p. 192.

erotics generally had no desire to pin them down or to burden them with identities; they kept its content in flux and left it elusive.[44] In that sense, secrecy becomes a tool, a way of "finessing the ambiguities created in daily desire."[45] Indeed, "secrecy" in African sexualities is the antithesis of Western norms around the need for legitimate "sex" to be public (i.e., out). Most importantly, it allows for inconspicuous sexual and gendered variance.[46] It is thus against the background of an African sex/gender system that we should analyze Semenya's ordeal with the IAAF. Such context allows us to liberate our knowledge production from the pitfalls of European rationality/modernity.[47] But before that, we consider the public responses to both Phelps and Semenya's stories.

A Decolonial Analysis of the Phelps/Semenya Conundrum

Out of the multiple identities that define Phelps and Semenya, the most prominent for the purposes of this discussion are race, gender and sexuality. Maldonado-Torres argues that "Race and caste, along with gender and sexuality, are perhaps the four forms of human differentiation that have served most frequently as means to transgress the primacy of the self-Other relation and to obliterate the traces of the trans-ontological in the concrete world."[48] Indeed, race always intersects with gender and sexuality, so we can speak of a racialized gendered sexuality.

Hence, Semenya's intersexuality should *not* be viewed separately from her race or socioeconomic background or even her geopolitical

44. Ibid. Also see Neville Hoad, *African Intimacies: Race, Homosexuality, and Globalization* (Minneapolis: University of Minnesota Press, 2007); Marc Epprecht, *Hungochani: The History of a Dissident Sexuality in Southern Africa* (Montreal: McGill-Queen's University Press, 2004); and Sylvia Tamale (ed.), *African Sexualities: A Reader* (Oxford: Pambazuka Press, 2011).

45. Serena Dakwa, "It's a Silent Trade" Note 43 at p. 203. Also see Steven Pierce, "Identity, Performance, and Secrecy: Gendered Life and the "Modern" in Northern Nigeria, *Feminist Studies* 33(3) (2007): 539–565.

46. Serena Dakwa, "'It's a Silent Trade'," Note 43.

47. Aníbal Quijano, "Coloniality and Modernity/Rationality," in Walter Mignolo and Arturo Escobar, *Globalization and the Decolonial Option*, pp. 22-32 (London: Routledge, 2013).

48. Nelson Maldonado-Torres, "On the Coloniality of Being," Note 4 at p. 113.

location in the world. Quijano warns us that "coloniality of power is based upon 'racial' social classification."[49] And Anne McClintock reiterates that "race, gender and class are not distinct realms of experience, existing in splendid isolation from each other."[50] All are fused in a complex equation of additions *and* multiplications. In the same vein, Phelps' Whiteness, his hetero-maleness and socioeconomic privilege, as well as the geopolitical location from which he emanates, all mesh into complex and infinite ways that shape the way the world views him: "Gender is about race is about class is about sexuality is about age is about nationality is about an entire range of social relations," asserts Kath Weston.[51] The discourses surrounding Phelps and Semenya are subtly laced with different forms of hidden-from-sight power.

The fact that Semenya's origins are located in rural South Africa, she is at once portrayed as primitive and inferior. Maldonado-Torres is correct when he writes: "The colonial aspect of Being sustains the color-line."[52] Racism usually goes hand in hand with paternalism; the opening paragraph of Ariel Levy's 2009 article in the *New Yorker* magazine epitomizes both:

> When people in South Africa say "Limpopo," they mean the middle of nowhere. They are referring to the northernmost province of the country, along the border with Botswana, Zimbabwe, and Mozambique, where few people have cars or running water or opportunities for greatness. The members of the Moletjie Athletics Club, who live throughout the area in villages of small brick houses and mud-and-dung huts, have high hopes nonetheless.[53]

By foregrounding Semenya's impoverished origins and spotlighting her deprivation, Levy—a White reporter for one of the leading weekly periodicals with a wide global circulation—is "sustaining the colour-line," for her largely White readers, upfront.

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49. Aníbal Quijano, "Coloniality and Modernity/Rationality," Note 47 at p. 25.

50. Anne McClintock, *Imperial Leather*, Note 2, at p. 5.

51. Kath Weston, "Me, Myself, and I," in Yvette Taylor, Sally Hines and Mark Casey (eds.), *Theorizing Intersectionality and Sexuality*, pp. 15-36 (New York: Palgrave Macmillan, 2011) at p. 15.

52. Ibid.

53. Ariel Levy, "Either/Or," Note 21.

Further down in the article, Levy provides a more detailed description of Semenya's village:

> Ga-Masehlong is a small village dotted with jacaranda trees; goats graze on the garbage and the grass on the roadsides. The houses have tin roofs, and people put rocks on top of them to keep them from blowing away. There are satellite dishes in several yards, but most people have dug their own wells and collect firewood from the bush for cooking.[54]

Through her words, Levy is almost suggesting that Semenya's very presence on the international elite sports stage itself is a "freak"; she doesn't belong. Such "discursive violence" as Ben Halm describes it, "often leads to, or anchors, material, cultural, and ontological violence."[55] Imperialism has always anchored its claims to cultural and material superiority and here, Levy is carefully re-sketching the backdrop of inferiority, heightening her readers' empathy with that single story about Africa and Africans.

Paradoxically, the empowering "restory" of Ga-Masehlong was provided via a capitalist avenue. In November 2019, the multinational sports brand, Nike commissioned Semenya to feature in a short film where she (re)narrates her village as "The birthplace of Dreams."[56] Although this was an advertising campaign for Nike, Semenya's authentic description of her village "balanced out" the single, hegemonic stories that we often read about Africa; it offered a more empowering and affirming account of both the athlete and of the person. It is an account that views Ga-Masehlong through a positive lens—one that zooms into the positive vistas of the village.

In the 3.27 minute-film, Semenya narrates, "At home my sister would be like… 'you look like a boy,' I know I look like a boy; so

54. Ibid.

55. Ben Halm, "Atalanta's Apples: Postcolonial Theory as a Barrier to the 'Balance of Stories'", *Research in African Literatures* 34(4) (2003): 155-173 at p. 156.

56. See Brent Lindeque, "Birthplace of Dreams—Nike's incredible new short film featuring Caster Semenya!" (Nov 21, 2019), available at: https://www.goodthingsguy.com/people/birthplace-of-dreams-caster-semenya/ [accessed Nov 24, 2019]

what? What is it that you're gonna do about it?"[57] The comment by Semenya's sister is influenced by the "colonization of the imagination" and deeply embedded in the "coloniality of knowledge."[58] Like most of us, her imagination has been colonized from the inside out, making it difficult for her to imagine beyond the gender binary. But how exactly are colonial constructs of gender and their male/female bench markers perpetuated?

The media plays a key role in constructing and maintaining the coloniality of knowledge. The public obsession with the two elite sportspersons, Phelps and Semenya, generated significant discourse and debate in the media. By taking a closer look at some of these discussions, we can delve deeper into the echoes of colonialism in our understanding of sex/gender, sexuality and other intersecting categories of identity, oppression and resistance.

The language used in the media to describe both Phelps and Semenya portray them largely as monstrosities; they are constantly "Othered" as freaks of nature:

> Obviously you don't get to be the most decorated Olympian of all time without a boat load of dedication and steely focus, but being *a biomechanical freak of nature* can't hurt. Phelps has *plenty of physiological quirks* that give more than a pinch of credence to the swimmer's nickname 'The Flying Fish', the first being his incredible wingspan.[59] [emphasis supplied]

> Incredibly, we might actually be seeing peak Michael Phelps at age 31, and, at the end of the day, his incredible body has a lot to do with it… That enormous size on the periphery was captured perfectly in this Associated Press photo. Just look at the flexibility and the reach. Now look at the size of his hands with respect to the rest of his body, the instruments that drive him through the water! No, seriously, look at his hands! *It is literally like he has flippers at the end of both his legs and his arms*.

57. See video at: https://news.nike.com/featured_video/caster-semenya-film-birthplace-of-dreams [accessed Nov 23, 2019].

58. Aníbal Quijano, "Coloniality of Power and Eurocentrism in Latin America," *International Sociology* 15(2) (2000): 215-232.

59. Valery Siebert, "Michael Phelps," Note 18.

And the flexibility! *It is like he is double-jointed everywhere*![60] [emphasis supplied]

Michael Phelps, on the other hand, is a genetic freak. He's 6'4", but more to the point *he has the wingspan of a prehistoric bird*. His unusually lengthy torso (it's the right size for a man 6'8") affords him more flat surface area with which to surf the top of the water. And he's got hyperflexible knees and ankles that give his kick more snap, and big hands and feet that push a lot of water. But according to sports scientists, his physique tells only part of the story. Whereas most elite swimmers measure blood lactate levels of 10 to 15 millimoles per liter after a race, Phelps measures as low as five. In other words, he's able to go faster calling on far less lactic acid–producing anaerobic energy reserves than his opponents.[61] [emphasis supplied]

Semenya won the eight-hundred-metre title by nearly two and a half seconds, finishing in 1:55.45. After the first lap of the race, *she cruised past her competitors like a machine*. She has a powerful stride and remarkable efficiency of movement: in footage of the World Championships, you can see the other runners thrashing behind her, but her trunk stays still, even as she is pumping her muscle-bound arms up and down…Semenya is breathtakingly butch. *Her torso is like the chest plate on a suit of armor.* She has a strong jawline, and a build that slides straight from her ribs to her hips.[62] [emphasis supplied]

Caster is a freak, and we paying tax money for this freak to compete, rules need to be laid down, otherwise anyone can send their own freak and change the game to who is the bigger freakshow.[63] [emphasis supplied]

Semenya, 18, stormed to victory last week in the women's 800 metres at the world athletics championships in Berlin. But her rags-to-riches journey had been called into question even before the starting gun. The

60. Cork Gaines, *Business Insider*, "Surreal photo of Michael Phelps shows just how much of a physical freak he is," Aug 13, 2016, available at: https://www.businessinsider.com/photo-michael-phelps-physical-freak-2016-8?IR=T [accessed Nov 17, 2019].

61. Joseph Hooper, "Get into Olympic Shape with Michael Phelps," *Men's Journal*, August 3, 2012, available at: https://www.mensjournal.com/features/get-into-olympic-shape-with-michael-phelps-20120803/ [accessed Dec 12, 2019].

62. Ariel Levy, "Either/Or," Note 21.

63. Posted by "Gamer16," on May 2, 2019 at the Polling website of *Mybroadband*, (May 1, 2019), available at: https://mybroadband.co.za/forum/threads/vote-should-caster-semenya-be-allowed-to-compete-without-reducing-her-testosterone-levels.1025968/ [accessed Nov 18, 2019].

athlete's muscular build, deep voice, facial hair and suddenly improved performances led to a frenzy of speculation that *the fastest woman in the world over two laps is, in fact, a man*. The governing body of world athletics confirmed that it has ordered Semenya to undergo a "gender verification test" to prove she did not have an unfair biological advantage. *British bookmakers offered prices on whether she will prove to be a man, woman or hermaphrodite*.[64] [emphasis supplied]

Jenny Meadows says Caster Semenya's return to competition has not been accepted by her fellow 800 metres runners. Meadows, who won bronze for Britain at the world championships last year, has always been sympathetic to the plight of the South African, who faced questions over her gender following her world title victory, but she doubts other athletes will follow her example… Immediately after the world championship final last year two competitors publicly questioned Semenya's gender. *'Just look at her,'* said Mariya Savinova of Russia, and Elisa Cusma Piccione of Italy went one step further, saying: 'I am not taking [Semenya's win] into consideration – *for me she is not a woman*.'[65]

The above narratives are emblems of coloniality that view deviant bodies as "failed copies of a natural original."[66] The assumption is that there is a normal, essentialized natural way of presenting, of being. Human diversity, symbolized in their physical endowments and excesses of lactic acid (in Phelps' case) and testosterone (in Semenya's), instead of being embraced, cause anxiety. But what exactly is a normal body? How does discourse encode and structure everyday life?

It is quite clear that while both athletes are portrayed as freaks and described with patronizing criticism, the public seems to be generally more accepting, even exalting of Phelps than Semenya. This is a typical example: "With Michael Phelps it can all seem so simple, so pre-ordained. *A swimmer defined by victory, a man who has*

64. David Smith, "Caster Semenya Row: Who are white people to question the makeup of an African girl? It is racism," *The Guardian*, (Aug 22, 2009), available at: https://www.theguardian.com/sport/2009/aug/23/caster-semenya-athletics-gender [accessed Nov 18, 2019].

65. Anna Kessel, "Rivals 'laughed and stared at' Caster Semenya, says Jenny Meadows," *The Guardian*, (July 21, 2010), available at: https://www.theguardian.com/sport/2010/jul/21/caster-semenya-jenny-meadows [accessed Nov 18, 2019].

66. Tavia Nyong'o, "The Unforgivable Transgression of Being Caster Semenya," *Women & Performance: A Journal of Feminist Theory* 20(1) (2010): 95-100 at p. 96.

always come through."[67] [emphasis supplied] Despite acknowledging Phelps' "quirkiness" there are no suggestions from the public that he should undergo corrective surgery or administer medication to "normalize" his lactic acid levels. Instead, he is treated as a "wondrous marvel."[68] Contrast that to the opinions about Semenya:

> Caster Semenya, the double Olympic gold medal winner in the women's 800 metres, is a "*biological male*" who should be required to take testosterone blockers to continue competing as female, a court will be told next week. The hearing in Lausanne, Switzerland, will be a test case for athletes with "differences of sexual development" (DSD) and is likely to influence rules surrounding *transgender athletes* taking part in women's sport.[69]

The same aversion to Semenya was apparent in a May 2019 online poll conducted on the South African *Mybroadband* website, asking voters "Should Caster Semenya be allowed to compete without reducing her testosterone levels?" The final results registered 68.3 percent voters saying that she should not be allowed to compete.[70]

The IAAF argued that the ADA test is about fairness and "leveling the playing field." Marthe de Ferrer highlights the double standards employed by the organization in their treatment of Phelps and Semenya:

> …since when was sport about everyone having a level playing field? At its very essence sport is about who has the most biological advantages over others, and how they can use them to run faster, throw further, or jump higher. Sport is entirely about the extremes of the human body,

67. Tom Fordyce, "Rio Olympics 2016: Five Olympics, five phases of Michael Phelps," *BBC Sport*, (Aug 10, 2016), available at: https://www.bbc.com/sport/olympics/37030928 [accessed Nov 17, 2019].

68. Monica Hesse, "We celebrated Michael Phelps's genetic differences. Why punish Caster Semenya for hers?" *Washington Post*, (May 2, 2019), available at: https://www.washingtonpost.com/lifestyle/style/we-celebrated-michael-phelpss-genetic-differences-why-punish-caster-semenya-for-hers/2019/05/02/93d08c8c-6c2b-11e9-be3a-33217240a539_story.html [accessed Nov 17, 2019].

69. Gary Mitchell, "Caster Semenya Case: Women's Athletics Star is 'biological male,' *The Times* (Feb 14, 2019), available at: https://www.thetimes.co.uk/article/caster-semenya-women-s-athletics-star-is-biological-male-zgzx2v2vd [accessed Nov 18, 2019].

70. Mybroadband, (May 1, 2019), available at: https://mybroadband.co.za/forum/threads/vote-should-caster-semenya-be-allowed-to-compete-without-reducing-her-testosterone-levels.1025968/ [accessed Nov 18, 2019].

> as we watch what our species is capable of. Take Michael Phelps as an example. He has been used countless times in this debate to undercut the IAAF's ruling, and with great reason. Phelps has been called a 'biomechanical freak of nature' and 'the ultimate superhuman' as he dominated the world of swimming for over a decade. And it's true – his body is literally built to be a top swimmer… Phelps kept other swimmers off the Olympic podium in multiple events for over 12 years, yet instead of subjecting him to humiliating tests on a global stage – we celebrated his victories and marvelled at his ability to smash records. That same luxury has not been awarded to Caster Semenya.[71]

Katrina Karkazis *et al.* also point out that "elite athletes differ from most people in a wide range of ways (e.g., rare genetic mutations that confer extraordinary aerobic capacity and resistance against fatigue). Why single out testosterone?"[72]

For sure, the mode of alienation for Phelps and Semenya is depersonalization, but their physiques, their "freakiness" hold different *meanings* for the gazing public. Phelps' larger-than-average body with massive sinewy muscles, chiseled abs and tall frame may be exaggerated, but it fits into the dominant sex/gender mould. Many even have a secret desire to be like him when they describe his body as a "master piece."[73] The fact that he is married to a woman and they have three children further flattens out and "normalizes" his "freakiness"; it also reduces his distress from the spectacularization. Phelps' maleness and masculinity are "stable" and never questioned; gender and sexuality are not part of the narrative about him, nor do they feature in his Othering experience.

Semenya, on the hand, has a body that does not fit into the standard colonial mould; it must be "fixed." Her Black body, on the margins, in disappearance, under the colonial gaze, became the object of scrutiny and policy formulation. The fact that her intimate partner is female introduces another level of revulsion and deviance

71. Marthe de Ferrer, " 'The ignorance is mindblowing'– why the Caster Semenya ruling hurts millions of people like me," *Manchester Evening News* (May 6, 2019), available at: https://www.manchestereveningnews.co.uk/news/news-opinion/the-ignorance-mindblowing-caster-semenya-16224157 [accessed Nov 17, 2019].

72. Katrina Karkazis *et al.*, "Out of Bounds?" Note 22 at p. 4.

73. See Pinterest posting: https://www.pinterest.com/pin/527906387572749873/?lp=true [accessed Nov 22, 2019].

to her "freakiness" as this posting demonstrates: "Caster Semenya chooses to *live her private life as a man with a woman as a lover* but competes as a female athlete. I am not a doctor nor a psychologist and I cannot say that I understand the full scope of this problem. However, I feel something is not right."[74] The heterosexual hegemony constructs a specific, supposedly stable femininity, for women, which is then reread as heterosexuality. Heterosexuality is part of gender performance whereby men and women display culturally-learned behaviours, gestures, dress codes and desires in contexts of capitalism and male domination.[75] In the binary world of modernity, society reads bodily performances and coded behaviour to fit us into one of two categories: man/woman; masculine/feminine; heterosexual/homosexual. It is this binary system, within coloniality of knowledge, that informed the gazing public which indicted Semenya for "living as a man with a woman lover." The condemnation signifies one of the ways that the system naturalizes coloniality of being. By desiring a fellow woman, you are viewed as living outside the (gender) ideal.

For Semenya, in the context of the heteropatriarchal-capitalist world-system, the sex, gender, class, racial and sexual hierarchies simultaneously come crushing down on her. Public knowledge about her is squarely "situated within the axis of the colonial difference produced by the coloniality of power in the modern/colonial world-system."[76] She found herself at the intersection of genderphobia, homophobia, racism and classism. Things would have been very different had such knowledge been situated within the cosmologies of her Indigenous African people that are more encompassing and tolerant of non-binary ways of being. As Michael Peletz points out, "gender pluralism" constitutes "pluralistic sensibilities and dispositions regarding bodily practices (adornment, attire, mannerisms) and embodied desires, as well as

74. Posted by "Fredl," on May 2, 2019 at the Polling website of *Mybroadband*, (May 1, 2019), available at: https://mybroadband.co.za/forum/threads/vote-should-caster-semenya-be-allowed-to-compete-without-reducing-her-testosterone-levels.1025968/ [accessed Nov 18, 2019].

75. See Judith Butler, *Bodies that Matter: on the Discursive Limits of 'sex'* (New York: Routledge, 1993).

76. Ramón Grosfoguel, "Colonial Difference, Geopolitics of Knowledge, and Global Coloniality in the Modern/Colonial Capitalist World-System," *Review (Fernand Braudel Center)* 25(3) (2002): 203- 224 at p. 208.

social roles, sexual relationships, and ways of being that bear on or are otherwise linked with local conceptions of femininity, masculinity, androgyny, etc."[77] Unfortunately, thanks to coloniality, most of us are illiterate in such pluralistic sensibilities.

Bodies like Semenya's threaten heteronormativity and that explains why the label "butch" is imposed on her body. The coloniality of gender consolidated the idea that male/female sexual relations are the norm, and totally ignored the realities of non-Western gender relations and ways of relating to the body beyond gender.[78] "Coloniality of Gender", as conceptualized by María Lugones, helps us to understand gender as a mechanism of colonial domination over non-White racialized bodies.[79] It was at that historical moment when the West subjugated Africa, introducing its specific sex/gender system, that the everyday lives of Africans were transformed; their bodies and subjectivities were at once placed under a new governing mechanism. The new gender regime-controlled bodies, sexualities and subjectivities and, through institutions such as education and religion, it was internalized by Africans (and those that it privileges). A decolonial shift of gender would require us, as Rosalba Icaza and Rolando Vázquez clarify, to relocate our reasoning in multiple and complex ways:

> …it would entail a radicalization of the notion of gender itself that locate its geo-political, geo-historical, geoepistemic, and body-political contexts. It would entail to challenge the tendency in some feminists' analyses and practices that understand gender, heteronormativity, patriarchy, women, men, female, male, and so on as cross-cultural and ahistorical categories of analysis.[80]

Indeed, through Semenya's story we see how the imposed colonial

77. Michael Peletz, "Transgenderism and Gender Pluralism in Southeast Asia Since Early Modern Times," *Current Anthropology* 47(2) (2006): 309-340, at p. 310.

78. See Oyeronke Oyewumi, *The Invention of Women*, Note 41; and Ifi Amadiume, *Male Daughters*, Note 29.

79. María Lugones, "Toward a Decolonial Feminism" *Hypatia* 25(4) (2010): 742-759. Also see Rosalba Icaza and Rolando Vázquez, "The Coloniality of Gender as a Radical Critique of Developmentalism," in Wendy Harcourt (ed.), *The Palgrave Handbook of Gender and Development: Critical Engagements in Feminist Theory and Practice*, pp. 62-73 (London: Palgrave Macmillan, 2016).

80. Rosalba Icaza and Rolando Vázquez, Ibid. at p. 65.

gender system dehumanizes the racial Other, denying her subjectivity and her very humanity. Such a system changes Semenya's gender from an abstraction to a vulnerability. As a mechanism, coloniality of gender allows us to clearly see and understand Semenya's humanity, not as a separate entity from her sex, gender, sexuality or race, but as constitutive of them. It brings into full view the possibility of being a woman outside the gender ideal.

The ruling party in South Africa—the African National Congress (ANC)—rallied behind Semenya. But it is significant that even those who spoke in support of her were only reinforcing essentialized notions of sex, gender and sexuality. For example, Leonard Chuene—the president of the ASA who fiercely defended Semenya to the *Los Angeles Times*, argued that "Semenya was an inspiration to rural girls, [who were] some of the most powerless and disadvantaged people in the country, yet she was being raked over the coals with questions on her gender." He pointed out that "There's no scientific evidence. *You can't say somebody's child is not a girl. You denounce my child as a boy when she's a girl? If you did that to my child, I'd shoot you.*"[81] [emphasis supplied] For his part, then South African president Jacob Zuma issued an official statement welcoming Semenya back from Berlin in 2009 and hailed her for reminding "the world of the importance of the rights to human dignity and privacy, which should be enjoyed by all human beings."[82] Julius Malema, radical leader of the ANC Youth League, asked angrily, "What is hermaphrodite in Pedi? There is no such thing, hermaphrodite, in Pedi. So don't impose your hermaphrodite concept on us."[83]

In their defence of Semenya, these three South African political elites invoked the nation and its culture. Through anti-Western

81. Robyn Dixon, "Gender Issue has always chased her," *Los Angeles Times*, (Aug 21, 2009), available at: https://www.latimes.com/archives/la-xpm-2009-aug-21-fg-south-africa-runner21-story.html [accessed Nov 18, 2019].

82. Jacob Zuma, "IAAF publicly humiliated Caster Semenya," *PoliticsWeb*, (August 25, 2019), available at: https://www.politicsweb.co.za/opinion/iaaf-publicly-humiliated-caster-semenya--jacob-zum [accessed Nov 22, 2019].

83. Beauregard Tromp, Nontobeko Mtshali, Bronwyn Gerretsen, Xolani Mbanjwa and Sapa, "What is Hermaphrodite in Pedi?" *IOL News*, (Oct 2, 2009), available at: https://www.iol.co.za/news/south-africa/what-is-hermaphrodite-in-pedi-460329 [accessed Nov 22, 2019].

rhetoric they wished to create a sense of ontological security. The contours of the nationalist imaginaries were drawn by sports patriotism. But in the process, each of them reinforced not only the coloniality of the fixed gender binary, but also paternalistic and dominant-oriented attitudes.[84] I share Tavia Nyong'o's expressed wonderment whether such attitudes reflected the speakers' own shame, dealing with their own "gender panic."[85]

It is ironic that President Zuma, who is on record for his homophobic sentiments, would publicly defend Semenya and remind the world of "the rights to human dignity and privacy." In 2007, Zuma said that same-sex marriages were a "disgrace to the nation and to God."[86] So, here we see Semenya's "femaleness" cancelling out Zuma's macho hetero-masculinity in defence of the nation. He hijacks feminist discourse to appeal to his country people. Once again, the female body is used to signify the nation's honour.[87]

Several elders subsequently educated Malema by telling him the sePedi term for intersex.[88] However, Malema's words of support cannot be read at face value; for a coherent understanding we must read in, under and behind the text. South African scholar Zine Magubane did exactly this when she saw Malema's comment as "an invitation to question what role race and imperial history have played in rendering intersex visible or invisible."[89] She cautions us against empty analyses of intersex that strip the concept of racial and national histories. The *meaning* and/or "*baggage*" that the term intersex (or hermaphrodite for that matter) carries in the US is not necessarily the same as it holds in South Africa.

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84. See Neville Hoad, *African Intimacies,* Note 44 at p. 400

85. Tavia Nyong'o, "The Unforgivable Transgression," Note 66 at p. 96.

86. *Sunday Times* (December 23, 2007), cited in Thabo Msibi, "Not Crossing the Line: Masculinities and Homophobic Violence in South Africa," *Agenda* 23(80) (2009): 50-54 at p. 52.

87. Women have always been implicated in nationalism and nation-building as seen in the use of metaphors such as "*mother*land," "*mother* tongue" and "*mama* Africa" to invoke a sense of love and care to the nation. See Anne McClintock, "Family Feuds: Nationalism and the Family," *Feminist Review* 44 (1993): 61-80.

88. E.g., a sePedi expert from the University of Witwatersrand asserted that the word is *setabane.* See Beauregard Tromp *et al.*, "What is Hermaphrodite" Note 83.

89. Zine Magubane, "Spectacles and Scholarship": Caster Semenya, Intersex Studies, and the Problem of Race in Feminist Theory," *Signs* 39(3) (2014): 761-785, at p. 768.

Semenya is also adored by the wider South African population, both White and non-Whites, a somewhat paradoxical situation given the deep chasms that threaten to destroy the post-apartheid body politic and the spirit and symbolism of the so-called "rainbow" nation. The public's ecstatic reception of Semenya is evidenced, for example, by the hundreds of people that meet her at the airport on her return home from international competitions.[90] The slogan "Hands off our Caster" gained momentum in the heat of her trial with many South Africans blogging and posting criticisms on IAAF's social media under that hashtag.[91] In 2018, she was named by the South African Insurance company, *Discovery Vitality* as its ambassador.[92]

Additionally, Semenya is widely "loved" as a national figure of resistance to the IAAF. However, this discourse accepts her as "a woman" but is not that interested in her gender/sex. It is more interested in her iconicity as a warrior against colonial/Western medical bullying, as well as her dignity and "African-ness." However, such expressions of support do not take on board what it actually means to "exemplify" theory through a "Black woman's body." Zine Magubane reminds us of the role that feminist scholarship has played in recognizing intersex bodies as "ontological gender."[93] She explains how Semenya's story helps us to "write race into" the concepts of gender and intersex—an impulse that had largely been ignored by mainstream Western feminists.

90. See Sean Jacobs and Herman Wasserman, "The Manufactured Controversy around Caster Semenya," August 28, 2009, *Africa is a Country*, available at: https://africasacountry.com/2009/08/if-caster-semenya-is-a-boy-im-a-boy [accessed Nov 16, 2019].

91. E.g., see Bruce Stephenson, "Two Bits: Hands off our Caster!", *The North Coast Courier,* May 10, 2019, available at: https://northcoastcourier.co.za/130919/hands-off-our-caster/; "Aubrey O'Callaghan, "Hands off our Caster Semenya," *Uncaptured South Africa*, June 29, 2018, available at: http://www.uncapturedsa.co.za/HANDS_OFF_OUR_CASTER_SEMENYA_!!!&p=read&aid=262; NdiMishomo, "Is it Testosterone?" *Word Press*, August 19, 2016, available at: https://ndimishumo.wordpress.com/ and "Editorial: Just Let our Caster Run," *City Press*, February 17, 2019, available at: https://city-press.news24.com/Voices/editorial-just-let-our-caster-run-20190217 [all accessed Nov 16, 2019].

92. See "Caster Joins as Discovery Vitality Ambassador," October 4, 2018, *Sport24*, available at: https://www.sport24.co.za/OtherSport/Athletics/caster-joins-as-discovery-vitality-ambassador-20181004 [accessed Nov 16, 2019].

93. See Zine Magubane, "Spectacles and Scholarship," Note 89, at p. 781.

Semenya's race blocks her rightful claim as a sportswoman among sportswomen.

"Bodies in doubt" have always existed in every part of the world; they are part of a diverse humanity. However, their medicalization and construction as a disorder started in Europe in the nineteenth century. Africa's history of slavery and colonialism is entangled in the exposure of a Black woman's body to various technologies of violence. Antje Schuhmann correctly points out that "the power of definition and classification, linked to a penetrating and curious gaze regime, [is] deeply involved in hegemonic politics of otherness."[94] Intersexuality has a long and painful history that is closely tied to colonial homophobic discourses and practices. Reis and Kessler remind us that:

> In the 19th century, when the new paradigm of sexual inversion emerged as a scientific explanation of homosexuality, 'hermaphrodites' (as they were then called) were considered potential homosexuals or 'inverts': If some people's bodies could look both male and female, then would such individuals be attracted to the 'wrong' sex? Physicians believed that surgery was warranted in many cases of atypical genitalia, not necessarily for the health, comfort, or pleasure of the patient, but to preclude the undesirable potential for homosexual sex.[95]

The criminalization and Othering of persons involved in same-sex intimate behaviour was introduced to Africa through colonial laws and religions.[96] Thus the seeds of homophobia and transphobia were sown on the continent. To date, religion is playing a key role in providing toxic fuel for spreading homophobic poison on the continent.[97]

The conflation of intersexuality with homosexuality also took root with such discourses. As we have seen, Indigenous knowledge systems around Africa accommodated gender plurality and "bodies

94. Antje Schuhmann, "Taming Transgressions: South African Nation Building and 'Body Politics'" *Agenda* 24(83) (2010): 95-106 at p. 103.

95. Elizabeth Reis and Suzanne Kessler, "Why History Matters: Fetal Dex and Intersex," *The American Journal of Bioethics* 10(9) (2010): 58-59 at p. 58.

96. See Sybille N. Nyeck (ed.), *Routledge Handbook of Queer African Studies* (New York: Taylor & Francis Ltd., 2019); and Sylvia Tamale, "Confronting the Politics of Nonconforming Sexualities in Africa," *African Studies Review* 50(2) (2013): 31-45.

97. See Jessica Horn, "Re-righting the Sexual Body," *Feminist Africa* 6 (2006): 7-19.

in doubt." But the colonial logic of a racialized gender foreclosed Semenya's participation. Colonialists viewed such bodies as a threat to the integrity of the heterosexual norms; they triggered gender panic. Ambiguous bodies "messed up" the norm of dominant male and subordinate female in classic heteropatriarchy; it was important to ascertain which individuals were entitled to male privilege.[98] This was not the case in pre-colonial Africa where the nature of patriarchies were quite different.[99] In the section that follows, we analyze a related but different type of discourse to show how science and the law interact in the construction of binary gender distinctions.

Medico-Legal Taxonomies: Semenya's Battle with Science and the Law

Mainstream scientific publications and dominant legal thinking lead us to believe that there are only two sexes and that the terms "man" and "woman" are natural, unambiguous and stable. They also operate under the mistaken assumption that one's birth sex predicts one's behaviour and actions. This is so despite medical evidence that has thoroughly disproved such assumptions.[100] The reality on the ground shows that 1 to 4 percent of the world's population are intersexed.[101] As Julie Greenberg explains:

> A binary sex paradigm does not reflect reality. Instead, sex and gender range across a spectrum. Male and female occupy the two ends of the poles, and a number of intersexed conditions exist between the two poles. Millions of individuals are intersexed and have some sexual characteristics that are typically associated with males and some sexual characteristics that are typically associated with females.[102]

98. Elizabeth Reis, "Impossible Hermaphrodites: Intersex in America, 1620–1960," *Journal of American History* 92(2) (2005): 411–41.

99. For a distinction between Victorian European "classic" patriarchy and Africa's "negotiable" patriarchy see Chapter five of this book.

100. See Julie Greenberg, "Defining Male and Female: Intersexuality and the Collision between Law and Biology," *Arizona Law Review* 41(2) (1999): 265-328.

101. Ibid. at p. 267.

102. Ibid. at p. 275.

Numerous studies have documented non-Western societies that view sex and gender along a spectrum. For example, the following names are used to formally describe "third genders": *hijra* in India, *kwolu-aatmwol* in Papua New Guinea, two-spirited people (or perjoratively, *berdache*) among some Native Americans, and *guevodoche* or *machihembra* in the Dominican Republic.[103] Such pluralistic gender systems render "bodies in doubt" visible and legitimate.

On November 1, 2018 the new regulations adopted by the IAAF went into force. The organization reported that:

> The Differences of Sex Development (DSD) Regulations establish new mandatory requirements governing the eligibility of women with certain differences of DSD and levels of endogenous testosterone above 5 nmol/L to participate in the female classification in eight events (the "Restricted Events") at international athletics competitions. Athletes who fall within the ambit of the Regulations are defined as "Relevant Athletes."[104]

The Restricted Events include 400m, 800m and 1500m races—events in which Ms. Semenya regularly participates at international competitions. The IAAF reiterated that the DSD Regulations were based on "strong scientific, legal and ethical foundation."[105] They further argued that the regulations were "an extremely progressive and fair compromise" between, on the one hand, the right of female athletes to compete separately from men so that they have the same opportunity to excel, and, on the other hand, the desire of "certain biologically male athletes with female gender identities" to compete in the female category of competition.[106] It compared Semenya's inclusion in the women's race to "an adult beating a child" or "a heavyweight boxer beating a flyweight boxer."[107] The organization further argued that:

103. Ruth Hubbard, "Gender & Genitals: Constructs of Sex and Gender," *Social Text* 46/47 (1996): 157-165.

104. See Arbitral Award, Note 26, at para. 12.

105. Ibid. at para 286.

106. Ibid. at para. 285.

107. Ibid. at para. 55.

> …the DSD Regulations are discriminatory but that on the evidence currently before the Panel *such discrimination is a necessary, reasonable and proportionate means of achieving the aim of what is described as the integrity of female athletics* and the upholding of the 'protected class' of female athletes in certain events."[108] [emphasis in original]

Julie Greenberg provides eight criteria that are typically used to determine sex, including: chromosomes (e.g., XY, XX); gonads (testes or ovaries); internal morphology (e.g., prostate or uterus); external morphology (penis or vagina); hormones (androgens or oestrogens); phenotype (e.g., facial hair, breasts); assigned sex at birth; and sexual identity. She further explains that for intersexed individuals, "the law must determine which of the eight sexual factors will determine their sex and whether any one factor should be dispositive for all legal purposes."[109] In reality, the eight sex factors do not always cohere as expected. Indeed, they are incongruent for intersexed bodies and to determine their sex, the law almost always turns to biology and medicine.

So we see how the IAAF enlisted science in order to prove its case in court and to provide the benchmark for determining sex categories. Presumably based on experiments that the experts of the IAAF expert medical panel conducted, it submitted that:

> (a) a marked difference in serum testosterone levels between men and women emerges at the same time as the sex difference in sport performance emerges;
>
> (b) the sex difference in serum testosterone levels causes the male physical advantages that drive the sex difference in sports performance.[110]

The panel concluded that females with 5 nanomoles of testosterone per litre of blood (nmol/L) and above, are *biologically identical* to male athletes and they "derive performance benefits from their physiology that are indistinguishable from the advantages derived

108. Ibid. at para. 626.

109. Julie Greenberg, "Defining Male and Female," Note 100 at p. 278-79.

110. Arbitration Award, Note 26 at para 290.

by male athletes."[111] The IAAF further augmented the findings of their science panel with a joint statement published by "42 leading sports science and sports medicine scientists" explaining the role of testosterone in athletic performance.[112] Hence, a "magical" line was drawn in the sand to distinguish "biological male" from "biological female." In order for the IAAF to maintain "the integrity of female athletics" this line must never be crossed.[113]

Based on these scientific findings, IAAF argued that Semenya was a biological male because her testosterone level was above 5 nmol/L, which gave her an unfair advantage. If Semenya wanted to compete with biological females, she had to use medication that would suppress her testosterone levels. The institutional power of the IAAF was deployed to ensure that anatomy corresponds to the idea of gender binary. It would not capitulate despite the fact that hormonal suppressive drugs have side effects with potentially harmful lifelong health risks.[114]

Many scientific journals, such as the *Journal of Clinical Endocrinology and Metabolism* and *Medicine and Sciences in Sports and Exercise* have defended the IAAF position. But feminists have challenged sex-linked biology. For instance, Katrina Karkazis *et al.* question the assumptions underlying such tests and, referring to the eight criteria described by Greenberg above, inform us that:

> …sex is *always* complex. There are many biological markers of sex but none is decisive: that is, none is actually present in *all* people labeled male or female. Sex testing has been and continues to be problematic because there is no single physiological or biological marker that allows for the simple categorization of people as male or female… Although it may be surprising, given that this is a popular belief in both IAAF and IOC statements, the link between athleticism and androgens in general or testosterone in particular has not been proven. Despite the many

111. Ibid. para 296.

112. Ibid. para 291.

113. See Rebecca Jordan-Young and Katrina Karkazis, *Testosterone: An Unauthorized Autobiography* (Cambridge, MA: Harvard University Press, 2019); and Katrina Karkazis, *Beyond Treatment: Mapping the Connections Among Gender, Genitals, and Sexuality in Recent Controversies over Intersexuality* (New York: Columbia University Press, 2002).

114. Katrina Karkazis and Rebecca Jordan-Young, "The Trouble with too much T," Op-Ed, *New York Times* (April 10, 2014), available at: https://www.nytimes.com/2014/04/11/opinion/the-trouble-with-too-much-t.html [accessed Nov 22, 2019].

assumptions about the relationship between testosterone and athletic advantage, *there is no evidence showing that successful athletes have higher testosterone levels than less successful athletes*.[115] [emphasis in original]

Biologist Anne Fausto-Sterling also asserts, "complete maleness and complete femaleness represent the extreme ends of a spectrum of body types. That these extreme ends are the most frequent, has lent credence to the idea that they are not only natural (that is produced by nature) but normal (that is, they represent both a statistical and a social ideal)."[116]

So, why does non-conformity of the body raise anxiety to the extent of demands to "fix" and re-mould it to fit into the binaried gender pigeon-holes? The processes of "gendering" "racializing" "classing" "heteropatriarchy" "capitalism" and "colonialism" are interrelated; each element depends on the other in a constitutive system that works for a common purpose. The interactive system operates through power-full classifications to create fundamental relations of inequality.[117]

Physical scientists use taxonomies or classifications to map and define relationships among phenomena.[118] This is very useful in fields such as biochemistry, astronomy and geology to facilitate theory construction and a more comprehensive understanding of natural phenomena. When the same formulation is transplanted to the social universe, the objective is very different, usually political. The "naturalized" sub-divisions of human populations are meant to facilitate the manipulation and subjugation of certain groupings.[119] For example, human classifications such as race, gender and sexuality are based, not on biology but on arbitrary parameters

115. Katrina Karkazis *et al.*, "Out of Bounds?" Note 22 at p. 6, 8.

116. Anne Fausto-Sterling, *Sexing the Body: Gender Politics and the Construction of Sexuality* (New York: Basic Books, 2000) at p. 76.

117. See Paula Ravecca and Nishant Upadhyay, "Queering Conceptual Boundaries: Assembling Indigenous, Marxist, Postcolonial and Queer Perspectives," *Jindal Global Law Review* 4(2) (2013): 357-378.

118. See Gerhard Lenski, "Societal Taxonomies: Mapping the Social Universe," *Annual Review of Sociology* 20 (1994): 1-26.

119. See George Miller and Mark Eleveld, "On 'Having Differences' and 'Being Different': From a Dialogue of Difference to the Private Language of Indifference," in Stanley Steiner, Mark Krank, Peter McLaren and Robert Bahruth (eds.), *Freirean Pedagogy, Praxis and Possibilities: Projects for the New Millennium*, pp. 88-101 (New York: Falmer Press, 2000).

linked to particular historical milieu (such as the rise of capitalism or modernity). In the words of the twentieth century classical racist and politician, Adolf Hitler:

> I know perfectly well, just as well as those tremendously clever intellectuals, that in the scientific sense there is no such thing as race… [But] I as a politician need a conception which enables the order which has hitherto existed on historic bases to be abolished and an entirely new and anti-historic order enforced and given an intellectual base.[120]

In Semenya's case Eurocentric taxonomies of sex and sexuality were re-executed in a scientific laboratory in Berlin, by a board in Monaco (where the IAAF is headquartered) and by a judge in Lausanne (where the Court of Arbitration for Sport and the Federal Supreme Court of Switzerland are located). Together, all these institutions instrumentalized her body by policing the boundaries of the body-scape within a binary gender system, giving it an intellectual base. They exercised their power to "Other" via classifications.

Historically, non-White female athletes have been disproportionately targeted when it comes to "sex verification" testing by the IOC and IAAF.[121] Hence, the dichotomized sex is also racialized, clearly exposing the racialized relations of power that have historically given meaning to gender. "Bodies in doubt," as conceived through the eyes of Europeans, take on another shade of doubt when they come in enigmatic Blackness. They must be "streamlined into 'modern' norms."[122] Several scholars have challenged the IAAF regulation, demonstrating its racialized and regionalized characteristics.[123] Usually such analyses have to

120. Cited in George Miller and Mark Eleveld, Ibid. at p. 89.

121. Most recently, in 2015, the IAAF disqualified the Indian athlete Dutee Chand on similar grounds. She dragged the organization to CAS and won the case. See Katrina Karkazis and Rebecca Jordan-Young, "The Powers of Testosterone: Obscuring Race and Regional Bias in the Regulation of Women Athletes," *Feminist Formations* 30(2) (2018): 1-39.

122. Munro, Brenna, "Caster Semenya: Gods and Monsters," *Safundi: The Journal of South African and American Studies* 11 (4) (2010): 383–396 at p. 391.

123. See e.g., Tavia Nyong'o, "The Unforgivable Transgression," Note 66; Neville Hoad, "'Run, Caster Semenya, Run!' Nativism and the Translations of Gender Variance," *Safundi* 11 (4) (2010): 397–405; Adjepong, L. Anima, and Ben Carrington, "Black Female Athletes as Space Invaders," in Jennifer Hargreaves and Eric Anderson (eds.), *Routledge*

carefully peel away complex layers of convention to reveal camouflaged racial hierarchies. Insightful poking through the official language such as "undue advantage" "biological male" "hyperandrogenism" "integrity of female athletes" "reasonable and proportionate discrimination" uncovers racialist and colonial ideologies lying at the foundation of this regulation. A member of the IAAF medical commission, Stéphane Bermon, remarked about hyperandrogenism:

> …a lot of these cases arise in poor countries or developing countries where diagnosis is not done at birth like is the case in Western countries at least. Diagnosis is not done and you realize that you have a 16 or 18 years old very well-performing athlete with an intersex condition who's going to enter into a major championship, and here probably [would be] stopped.[124]

Karkazis and Jordan-Young, anthropologist and sociomedical scientist, respectively, dispute Bermon's allusion that intersex cases are more common in developing countries:

> There is no evidence that this is so. The major point of geographic variation is not in the *prevalence* of intersex, but in medical *responses* to intersex. Specifically, the standard protocol in the Global North has, for more than five decades, been characterized by an urgency to identify and "normalize" people with intersex variations at the earliest possible stage of life, which includes modifying atypical genitals and controlling hormone levels by surgery or pharmacological intervention. For a variety of reasons that might include cultural differences, general infrastructure, medical resources, and others, early medical intervention has never been routinized outside the Global North.[125] [emphasis in original]

Zine Magubane also argues that selective investigation by the elite

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Handbook of Sport, Gender and Sexuality, pp. 169–78 (London: Routledge, 2014); and Dawn Bavington, "Regulating Hyperandrogenism in Female Athletes: The History and Current Politics of Sex-Control in Women's Sport," unpublished PhD dissertation, University of Otago (2016).

124. Cited in Katrina Karkazis and Rebecca Jordan-Young, "The Powers of Testosterone" Note 121 at p. 20.

125. Ibid. at pp. 20-21.

sports regulatory bodies can only be accounted for through the intersections of race and nation. For her, intersexed bodies in elite sports triggered a "gender panic" that was geopolitical and racial in nature. Surgical "corrections" of intersexed bodies in the West were prevalent to "normalize" Whiteness. "An ambiguously gendered White body needed to be corrected to retain its whiteness, whereas an ambiguously gendered Black body was seen as confirming the essential biological difference between whites and blacks."[126]

Through simple, but power-full, strokes of the signatures of a doctor and a judge, with the full backing of hegemonic Euro-American culture and ideologies, gender complexities are reduced to binaries. Biological and legal constructs are assembled by cramming human beings into dichotomized and hierarchized neat little boxes marked: male/female; masculine/feminine; heterosexual/homosexual; White/non-Whites; modern/traditional; civilized/uncivilized, and so forth. By so doing, many non-White people are subjected to injustice, stigmatization and ostracism. For Africans, the process started in the seventeenth century with the reification of race and it has continued through processes such as Semenya's story. Just as the imperialists of old run to science to rationalize their political pursuits, so too did the IAAF in order to justify its gender reassertion. By initiating what Tavia Nyong'o terms the "ugly, gender-disciplinary inquisition," the IAAF was reasserting both gender normativity and racial hegemony.[127]

Despite the fact that science is presented as "pure", "logical", and "rational" and scientists as "detached discoverers", the fact is that the discipline is always textured by the social and cultural contexts within which scientists operate. There is no such thing as "natural knowledge" or "objective truth." Philosopher Thomas Kuhn's work on the history of science revealed science to be a discipline designed to solve "clearly articulated problems with agreed-upon intellectual and instrumental tools… [and] within a given paradigm."[128] In other words, paradigms serve as *representations* of reality (not reality itself)

126. Zine Magubane, "Spectacles and Scholarship," Note 89 at p. 781.

127. Tavia Nyong'o, "The Unforgivable Transgression," Note 66 at p. 98.

128. See Thomas Kuhn, *The Structure of Scientific Revolutions* (Chicago: University of Chicago Press, 1962), cited in Azadeh Achbari, "The Reviews of *Leviathan and the Air-Pump*: A Survey," *ISIS* 108 (1) (2017): 108-116, at p. 109.

to guide scientific research. The scientific panel in Semenya's case was working to reinforce and re-legitimize the sex/gender paradigm.

In *The Leviathan and the Air-Pump*, Steven Shapin and Simon Schaffer question the experimental method created in the seventeenth century as a means of producing scientific knowledge.[129] Coloniality has conditioned us to value and venerate the work of gloved and sanitized people (mostly White men) in White coats bending over microscopes in pristine labs; to accept their results as unquestionable and to respect their verdicts as *the* "truth." So when the IAAF panel of medical experts declared Semenya "not female," her fate was sealed. The "scientific" results were then confirmed and institutionalized by the gavel of the bewigged judge and the general public applauded. Indeed, science and law are very much part of the colonial body politic. Karkazis and Jordan-Young coined the term "T talk" to capture the colonial noise about testosterone in sports and reiterate:

> Because T is coded as natural and in the realm of biology, T talk fundamentally serves scientism, which elevates scientific values, evidence, and authority above all others, even as it paradoxically obviates the need for evidence. Scientism equates scientific knowledge with knowledge itself, especially valorizing the natural sciences. Scientism thus lends added weight and substance to the scientific arguments about the regulation.[130]

Hence, the court reinforced gender binaries, reducing sex to a measureable entity. But how exactly do we "measure" sex?

Monica Hesse exposes the ridiculousness of the court's ruling in the following way: "If Caster Semenya has 4.99 nanomoles of testosterone, the 'integrity of female athletics' will be preserved, but at 5.01, it won't."[131] Multiple standards of being a woman have been

129. Steven Shapin and Simon Schaffer, *Leviathan and the Air-Pump* (Princeton: Princeton University Press, 1985).

130. Katrina Karkazis and Rebecca Jordan-Young, "The Powers of Testosterone," Note 121 at pp. 7-8.

131. Monica Hesse, "We celebrated Michael Phelps's gentic differences. Why punish Caster Semenya for hers?" *Washington Post*, (May 2, 2019), available at: https://www.washingtonpost.com/lifestyle/style/we-celebrated-michael-phelpss-

set by the courts; Semenya is a woman culturally and socially but biologically and legally she is not. Such arbitrary moulding of sex indicates its sociopolitical construction.[132]

African cultures that accommodate sex ambiguity and fluidity were not consulted. Instead, intersexuality was pathologized through imposing intrusive tests on Semenya and causing her considerable psychological stress and trauma. The Court of Arbitration for Sport, reports about Semenya's personal statement for their consideration:

> She began her first statement by explaining that 'it feels like this new rule was created because of me.' She described how her body 'has been scrutinized by the IAAF for almost ten years' while also being widely discussed 'by other athletes, sports doctors, sports officials, and the public.' The 'scrutiny, judgement, speculation and medical intervention' that Ms. Semenya has endured over the years has been an affront to her dignity and has caused her 'immense pain and suffering.'[133]

While the case was against one individual, it has far-reaching implications and touches all of us at various levels. The double standard employed by IAAF towards the Semenyas and the Phelps of this world is a serious social justice issue. Ferrer points out the negative repercussions that the Semenya ruling may have:

> Importantly, however, this ruling has repercussions beyond the world of elite sport. Sharron Davies may argue that this is a victory for women's sport, but she is failing to recognise what a toll this decision is taking on the wider world. Most of us following the case are not elite athletes. Most of us following will never be directly restricted in sport by the ruling. But many of us following are still affected. For one, this case has fuelled transphobia and anti-transgender campaigners. Many people have mistakenly argued Caster Semenya is transgender. To conflate the two is damaging and extremely problematic. Furthermore, it has real-world implications for intersex people. As the media and the public

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genetic-differences-why-punish-caster-semenya-for-hers/2019/05/02/93d08c8c-6c2b-11e9-be3a-33217240a539_story.html [accessed Nov 17, 2019].

132. See Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990).

133. See Arbitral Award, Note 26 at para. 73.

speculate endlessly over the intimate details of Semenya's medical history, it shows the lack of respect we have for intersex – or suspected intersex – people's lives.[134]

In a joint letter, three UN Special Rapporteurs condemned the DSD test, charging the IAAF with sex discrimination:

> The IAAF regulations seem to have specifically singled out women with a specific set of differences of sex development, androgen sensitivity and natural testosterone levels that are higher than 5nmol/L. However, as recognized by the Court of Arbitration for Sport, a range of natural physical and biological traits are association with performance in sports. These traits include height, lean body mass and specific genes that influence muscle composition, strength and endurance, in addition to social and economic factors and availability of economic resources.[135]

The Special Rapporteurs further emphasized the human rights violation and stigma engendered by the regulation:

> Moreover, scientific concerns cannot take precedence over concerns about enjoyment of human rights or human rights violations… The regulations reinforce negative stereotypes and stigma that women in the targeted category are not women – and that they either need to be 'fixed' through medically unnecessary treatment with negative health impacts – or compete with men, or compete in 'any applicable intersex or similar classification'… which can call into question their definition of self. Should a woman athlete be excluded from competitions for women as an outcome of the process stipulated in the regulations, this will most likely be interpreted as a judgement or questioning of their sex or gender identity.[136]

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134. Marthe de Ferrer, " 'The ignorance is mindblowing' – why the Caster Semenya ruling hurts millions of people like me," *Manchester Evening News* (May 6, 2019), available at: https://www.manchestereveningnews.co.uk/news/news-opinion/the-ignorance-mindblowing-caster-semenya-16224157 [accessed Nov 17, 2019].

135. See joint letter dated 18 September 2018 by Special Rapporteurs: (a) on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; (b) on torture and other cruel, inhuman or degrading treatment or punishment; and (c) the Working Group on the issue of discrimination against women in law and in practice. Ref OL OTH 62/2018.

136. Ibid.

On stereotyping and surveillance, they said:

> The assessment for 'exclusion or treatment' based on the IAAF regulations relies on suspicion and speculation, based on stereotypes about femininity. This effectively legitimizes widespread surveillance of all women athletes by requesting national federations as well as doctors, doping officials, and other official personnel to scrutinize women athletes' perceived femininity, which can include appearance, gender expression, and sexuality. Women who are understood to be 'suspicious' about their natural physical traits are tied to subjective and cultural expectations regarding which bodies and modes of gender expression are 'appropriate,' or even valorised by adherence to traditional or normative aesthetics of femininity.[137]

Societal fixation with a universalized system of binary oppositions regarding gender and sexuality is inextricably bound up with the broader patriarchal-capitalist system. Stereotyped sex and gender roles and behaviour, women's enormous (unwaged) contribution to domestic labour within hetero marriages, belief in male primogeniture and neoliberal economic policies—all have a direct connection to the efficient operation of the capitalist system.

African countries continue to rely on institutions that have deep roots in colonialism, including education, religion, law and economics. All these ensure that the supremacy of the capitalist system is maintained. A rigid binary gender system that recognizes "superior" males over "subordinated" females is supported by legal power. Our legal status as male or female affects our relations in marriage, parenting, inheritance, and employment; it affects our access to healthcare and social security. Sex, gender and sexualities which do not conform to the institutionalized binaries totally disorganize the patriarchal-capitalist matrix, posing an existential threat to its strategic interests.

Caster Semenya is an important symbol of how society, governed by coloniality, works to fit all of us into the two boxes labelled "male" and "female." Institutions such as science and the law are mobilized to moor social gender norms to birth sex, when in reality gender is neither a coherent nor a stable category. "Scientific" taxonomies

137. Ibid.

of human populations that categorize us into hierarchized binary classifications facilitates the unjust distribution of resources. The law will gloss over the awkward contradictions and double standards that come with the rigid gender ideology simply to maintain the status quo.

Semenya went to court demanding that she be allowed to compete "free of drugs, free of speculation and free of judgment."[138] She rejected being forced into, incorporated into the modern/colonial gender system when she refused to be subjected to hormonal treatment. Analyzing the embodied experience of Semenya allowed us to comprehend that "the modern/colonial system of gender is not a universal but a concrete historical experience of subjugation.[139] She proves to us that there are multiple ways of inhabiting our bodies and the world. That is a central point in the struggle for the decolonial reimagination of our bodies. The chapter ends with an extract from Melissa Kiguwa's empowering poem, "Raise the Sun."

there are mud packed huts hidden
between the crevice of your elbows,
moon shaped daggers under
the curve of your fingernails.
with monsoons inside your voice,
an avalanche inside your belly,
you raise the sun like hallelujah.
–Melissa Kiguwa[140]

138. Arbitral Award, Note 26, at para. 73.

139. Rosalba Icaza and Rolando Vázquez, "The Coloniality of Gender" Note 79 at p. 67.

140. Melissa Kiguwa, "Raise the Sun," *Reveries of Longing* (Johannesburg: Africa Perspectives Publishing, 2014).

5

Legal Pluralism and Decolonial Feminism

... for women, 'narrative' is not always and only,
or even necessarily, a speech act.
We women signify: we have many modes of (re)dress.
—Abena Busia[1]

The situations, mechanisms and processes through which African people position themselves as legal subjects are important. In fact, it is these processes that regulate our day-to-day activities and not the provisions of the law in the books. Written law is a secondary, rather than a primary locus of social regulation, particularly for women.[2] Hence, we can speak of *law-in-the-books vs. law-in-practice* or *state-law vs. people's-law* or *official-law vs. living-law* or *legal-centralism vs. legal pluralism*. Sally Engle Merry usefully makes a distinction between "classic legal pluralism" and "new legal pluralism."[3] The former limited its analysis to the intersections of European and Indigenous law or that between the colonizer and the colonized.

1. Abena P. A. Busia, "Silencing Sycorax: On African Colonial Discourse and the Unvoiced Female," *Cultural Critique* 14 (1989-1990): 81-104 at p. 104.
2. See Ambreena Manji, "Imagining Women's Legal World: Towards a Feminist Theory of Legal Pluralism in Africa, *Social and Legal Studies* 8(4) (1999): 435-455.
3. Sally Engle Merry, "Legal Pluralism," *Law and Society Review* 22(5) (1988): 869-896, at 872-874.

However, she argues, beginning with the late 1970s, the latter expanded its scope to analyses of legal relations between dominant and subordinate groups. Under new legal pluralism, for example, the investigations of a subordinated social group such as women would focus not on the effect of law on women (or even vice versa), but rather, on the conceptualizations of "a more complex and interactive relationship between official and unofficial forms of ordering."[4] To put it differently, the relationship between formal law and law-in-practice.

This chapter focuses on law-in-practice. In particular, it analyzes the phenomenon of customary law and the alternative ways of community ordering and conflict resolution, commonly referred to as "community justice."[5] It also discusses social ordering and control through religious practices. Feminism has redefined the experience of women with the law and the struggle for equality between men and women in pre- and post-colonial times has both benefited from and been constrained by the conception of legal pluralism.[6]

State "Customary Law" versus Living Customary Law

Legal centralists posit that the state is the sole mother of laws while pluralists argue that communities and individuals are also creators and enforcers of the law. As the subjects of law, individuals that make up communities determine the rules of conduct by which they are bound, and these may be state laws or non-state norms. Critics have argued that having a multiplicity of legal norms weakens the rule of law, however, in Ralf Michael's opinion, legal pluralism only allows for more representation and reduces conflict of laws.[7]

4. Ibid. at p. 873.

5. Daniel Nina and Pamela Jane Schwikkard make a distinction between "old" and "new" legal pluralism– the former referring to the relationship between state law and customary law, while associating the latter with community ordering and conflict resolution. See Daniel Nina and Pamela Jane Schwikkard, "The 'Soft Vegeance' of the People: Popular Justice, Community Justice and Legal Pluralism in South Africa," *Journal of Legal Pluralism* 36 (1996): 69-87.

6. Ambreena S. Manji, "Imagining Women's 'Legal World'" Note 2.

7. E.g., see J. P. B. Josselin de Jong, "Customary Law: A Confusing Fiction" in A. D. Rentein & A. Dundes (ed.), *Folk Law: Essays in the Theory and Practice of Lex non Scripta*, pp. 111-17 (New York: Garland, 1994) at p. 111.

Nevertheless, when legal structures of non-state communities are allowed a meaningful existence in a pluralist situation, the resolution of conflict within these communities is simplified because the communities are relatively homogeneous. "This homogeneity provides a good argument to leave the regulation of their own internal affairs to themselves."[8]

Most professional lawyers and judges on the continent, trained in Western legal traditions, neither appreciate nor understand law-in-practice. This is a result of colonialism, which institutionalized and professionalized the administration of justice to the extent that most elite Africans accept it as "natural."[9] But it was far from natural, and positive law was far from being objective and neutral. When colonialists introduced written laws, new legal professionals and an "independent" court system, they touted them as "more civilized" than the old legal order. The new legalities promised to overcome the "whims" of the "primitive" pre-colonial legal system.[10] But the fact is that the historical roots of the un-professionalized justice system that the majority of Africans (*wananchi*) use for dispute resolution run deep in their traditional cultures. Hierarchies of norms were introduced with those of the colonialists always sitting on top. Filtered through the Eurocentric prism of dualities, the tendency is to view the modern against the traditional and the formal against the customary. Our training as lawyers orients us to always run to formal statutory laws for redress; indeed, many of us cannot see beyond statutory law reform. We associate "progress" with the modern, the formal. But, as Aninka Claassens and Sindiso Mnisi caution us, such false dichotomies, "obscure the cross-cutting reality of the lived experience of people in 'communal areas' and their ongoing efforts to reconcile custom and tradition with the broader values and changes taking place in society."[11]

8. Ralf Michaels, "The Re-Statement of Non-State Law: The State, Choice of Law, and the Challenge from Global Legal Pluralism," *Wayne Law Review* 51 (2005): 1209-1259 at p. 1251

9. Boaventura de Souza Santos, "From Customary Law to Popular Justice," *Journal of African Law* 28 (1&2) (1984): 90-98 at p. 96.

10. *Cf*. Samera Esmeir, "On the Coloniality of Modern Law," *Critical Analysis of Law* 2(1) (2015): 19-41.

11. Aninka Claassens and Sindiso Mnisi, "Rural Women Redefining Land Rights in the Context of Living Customary Law," *South African Journal on Human Rights* 25(3) (2009): 491-516 at p.493.

Canadian law professor Jacques Frémont argues that "Africa is probably today's largest living laboratory of effective legal pluralism."[12]

As a force of subjugation, colonialism approached law in terms of "law and order," focusing on suppressing the pluralism of competing legal traditions, a tendency described by Robert Cover as "jurispathic."[13] The primary focus for colonialists was on penal provisions and criminal proceedings. The emergence of prisons and "penal coloniality" were indeed "an integral facet of colonialism" in Africa.[14] The continuing legacy of penal coloniality is still evident, being embedded in the state criminal justice system that is used to coerce and control. Some scholars have also argued that the establishment of the International Criminal Court (ICC) in 2002 was a neocolonial guise to further the mission of imperialism.[15] They point to its exclusive targeting of African leaders and their sympathizers.[16] The other aspect of law that colonialists were most interested in was commercial law, to facilitate the extraction and export of resources and the importation of goods for capitalist expansion. So, when European colonialists occupied Africa in the nineteenth century, they introduced their own systems of justice and policing. Conservation and sustainable development were off their "legal radar." Similarly, the beneficial aspects of the law such as social security schemes and bills of rights were not part of the legal system until formal independence.

All formal legal systems in Africa are alien, adversarial, non-participatory, expensive and divided into civil and criminal silos. It has been six decades or so since formal independence and the systems are still intact while a few laws have been revised. The bulk

12. Jacques Frémont, "Legal Pluralism, Customary Law and Human Rights in Francophone African Countries," *Victoria University of Wellington Law Review* 40(1) (2009): 149-165 at p. 149.

13. Robert Cover, "The Supreme Court, 1982 Term-Foreword: Nomos and Narrative," *Harvard Law Review* 97 (1983): 4-68.

14. See Viviane Saleh-Hanah, *Colonial Systems of Control: Criminal Justice in Nigeria* (Ottawa: University of Ottawa Press, 2008) at p. xiii.

15. See Kamari Maxine Clark, *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa* (Cambridge: Cambridge University Press, 2009); and Ole Frahm, *Actors of Accountability in Africa: ICC, African Union and Nation-States*, IAI Working Paper 15/12 (Rome: Istituto Affari Internazionali, May 2015).

16. Torque Mude, "Demystifying the International Criminal Court (ICC) Target Africa Political Rhetoric" *Open Journal of Political Science*, 7 (2017): 178-188.

of revised laws on the continent are in the two areas of criminal and commercial laws—commercial law to facilitate extraction of resources and labour confluence with commercial and tax laws. This is not by accident as the capitalist system turned all of us into "economic citizens." And criminal law is deployed as a tool to control and regulate. All this is a far cry from the traditional legal systems that existed prior to colonialism which were generally restorative, participatory and communal in finding solutions and reconciling people. An intrinsic dimension of traditional African societies are the "palaver tree" meetings where communities used to converge and discuss issues of common interest including dispute resolution.[17]

In most cases, the colonizers simply copied, pasted and imposed their metropolitan laws and enforcement mechanisms on the colonies. In western Africa, for example, the French introduced French Civil Law and regulations (e.g., the Code Napoléon of 1804 and the Penal Code) to their colonies. The British, on the other hand, introduced Common Law, doctrines of equity and legislations, including penal laws. Prior to flag independence, the received metropolitan justice systems applied to the colonizers and a small number of assimilated Africans who "opted out" of traditional justice.[18] The majority of natives were subjected to their Indigenous justice systems dubbed "customary law," particularly in "personal matters" involving family, inheritance and land (despite the fact that colonialism radically changed land relations). Colonialists tried to mitigate the incongruity and sometimes clumsy effects of these multiple legal systems by introducing an elaborate system of indirect rule.[19] However, in settler colonies under direct rule, such as South Africa, the attempt was to impose

17. Ibid.

18. The French, for example, attempted to assimilate elite Africans (*assimilés*) who permanently renounced Indigenous law and were fully subject to French law. Those with customary status (*statutcoutumier* or *indiginés*) were subjected to customary law. See Mastin W. Prinsloo, "Recognition and Application of Indigenous Law in Francophone Africa," *Journal of South African Law* 2 (1993): 189-199 at p. 190.

19. Gordon R. Woodman, "Legal Pluralism and the Search for Justice," *Journal of African Law* 40(2) (1996): 152-167 at p. 157.

legal assimilation, whereby colonialists controlled natives centrally using European laws.[20]

It is a singular shame and a perplexing fact that African sources of law form a negligible part of the continent's formal law in the twenty-first century. To date, African countries typically have multiple sources of formal law, that is, the received colonial laws, received faith-based laws (e.g., Shari'a in most former French colonies) and customary law that was ossified by colonialism. These laws exist in a vertical, hierarchical relationship with each other and are enforced by courts of law. The received colonial laws lie on top of the legal hierarchy and, typically, take precedence over all other forms of law. As their name suggests, these laws were essentially a replica of the legislations that existed in the colonial metropoles. Such laws are based on legislation, English Common Law, Roman and Dutch civil codes and international treaties. Their main purpose was to protect the interests of the colonialists and to facilitate their commercial transactions in the colonial outposts.

Among the received laws, one stands out as the premier law to which all other received colonial laws must bend, that is, the constitution. Constitutions set out the basic principles of governance and the values that nation states must adhere to. Although precolonial societies also had rules that guided their governance, ranging from monarchical structures to chieftaincies, all former colonies adopted modern constitutions (as we know them today) at formal independence. These constitutions also formulate Bills of Rights which domesticate fundamental principles of international human rights, including the limits of their enforceability. The constitutional dispensation of any country requires that all laws, including those founded in legislation, religion and custom, are subordinated to the provisions of the constitution. Given the top-down fashion in which colonial laws were imposed on Africa, their legitimacy and moral acceptance by the majority of African people is questionable, at best.[21]

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20. See Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton: Princeton University Press, 1996).

21. See H.W.O Okoth Ogendo, "Constitutions without Constitutionalism: An African Political Paradox," in Douglas Greenberg, Stanley Kartz, Mclanie Oliviero and Steven Wheatley (eds.), *Constitutionalism and Democracy: Transitions in the Contemporary World*, pp. 65-80 (New York: Oxford University Press, 1993); and Yash Ghai,

Furthermore, colonialists truncated traditional justice by retaining its substantive content but simultaneously abolishing its enforcement mechanisms. They set up local courts administered by chiefs and headmen to enforce traditional justice which they baptized "customary law." The jurisdiction of this customary law extended to previously autonomous social entities such as the household, clans and gender associations, which now fell under chiefly power. Not only did the colonial administrators keep close supervision of the chiefs' courts, but they also maintained control over the courts' interpretation of customary law.[22] The result was a "tamed" customary law that was subjected to a repugnancy test.[23] Such test demanded that customary law would only be applicable where it did not offend European notions of natural justice and morality. The French, for example, explicitly decreed that customary law was only to be applicable if it was not "contrary to the principles of French civilization."[24] It would also be inapplicable if it was incompatible with any written law. Many African legal systems, including Uganda's, still carry variants of this repugnancy test that hierarchizes the pluralistic systems of law to this day.[25] It is clear that the "justice" and "morality" to which customary law had to defer were based on colonial standards. It is, therefore, mind-boggling to think that many "independent" African states still carry this racist test for assessing the validity of their customary norms and practices. It must be noted, however, that today, most African

"Constitutionalism: African Perspectives," in Patricia Kameri-Mbote and Collins Odote (eds.), *The Gallant Academic: Essays in Honour of H.W.O. Okoth Ogendo,* pp. 149-170 (Nairobi: University of Nairobi School of Law, 2017).

22. Henry F. Morris and James S. Read, *Indirect Rule and the Search for Justice, Essays in East African Legal History,* (Oxford: Clarendon Press, 1972) at pp. 144-8.

23. Charles M. Fombad, "The Context of Justice in Africa: Emerging Trends and Prospects," in UNDP, *Rethinking the Role of Law and Justice in Africa's Development,* pp. 1-24 (UNDP, June 2013).

24. Mastin W. Prinsloo, "Recoginition and Application of Indigenous Law in Francophone Africa," Note 18 at p. 191.

25. Botswana's Customary Law Act (No. 51 of 1969), for example, defines customary law as being "in relation to any particular tribe or tribal community, the customary law of that tribe or community so far as it is not incompatible with the provisions of any written law or contrary to morality, humanity or natural justice." [see section 2 thereof]. Also see Mikano Kiye, "The Repugnancy and Incompatibility Tests and Customary Law in Anglophone Cameroon," *African Studies Quarterly* 15(2) (2015): 85-106.

constitutions subject all laws (including Judicature Acts that carry the Repugnancy Clause) to constitutional tenets.

It is a well-documented fact that the formal legal system is only marginal to the experience of day-to-day justice of African *wananchi*. For example, in Uganda, less than 5 percent of dispute resolution takes place in a court of law.[26] The remaining 95 percent of the population use the informal "living customary law" or community justice to manage conflicts, maintain social harmony and protect important resources.[27] Oloka-Onyango confirms this when he states that, "most East African citizens are disengaged from the operation of official written law except where confronted with its most coercive, criminal, and punitive aspects."[28] A study conducted in Senegal, Burkina Faso, Niger and Mali by Ayesha Imam and Evelien Kammiga also demonstrated that "customary and religious law play a crucial role in determining the real entitlements at the grassroots level for both women and men."[29] Not only do such facts point to the elitist character of colonial laws but also to the rejection of state justice as a mechanism of social control by *wananchi*. Legal pluralism is also prominent in most African marriages. The majority of parties mix customary marriage rituals like *lobola* with religious or civil marriages.

It is imperative to distinguish state customary law from living customary law. Living customary law and community justice are based on horizontal relationships of consultation, participation and reciprocity. Most importantly, they have the unique features of

26. The Hague Institute for Innovation of Law (HiiL), *Justice Needs in Uganda, 2016: Legal Problems in Daily Life*, at p. 6, available at: https://www.hiil.org/wp-content/uploads/2018/07/Uganda-Mini-Folder_2016-1.pdf [accessed June 3, 2019]. But even with such low utilization of formal courts, there was a case backlog of 21 percent in 2017/2018. See Government of Uganda, *The Justice, Law and Order Sector (JLOS) Annual Report 2017/2018* at p.3, available at https://www.jlos.go.ug/ [accessed June3, 2019]. also see Key Note Address by the Chief Justice at the 23rd Annual Joint Government of Uganda Development Partners Review (October 4, 2018), available at https://www.jlos.go.ug/index.php/document-centre/annual-review-conferences/23rd-annual-jlos-review-2018 [accessed July 22, 2019].

27. The Supreme Court of Nigeria defined African customary law as "the organic or living law of the Indigenous people." See *Oyewumi v. Ogunsesan* [1990]5 S.C.N.J. 33 at p. 53.

28. J. Oloka-Onyango, *When Courts do Politics: Public Interest Law and Litigation in East Africa*, (Newcastle upon Tyne: Cambridge Scholars Publishing, 2017) at p. 205.

29. Ayesha Imam and Evelien Kamminga, *Women in Search of Citizenship: Experiences from West Africa*, (Amsterdam: KIT Publishers, 2012) at p. 27. Also see Ayodele Atsenuwa, *Engaging Custom and Customary Law: Towards a New Feminist Legal Agenda in Nigeria*, (Lagos: Legal Research and Resource Development Centre, 2009).

adaptability and ability to change in ways that reflect evolving values in society. Such dynamism is not encumbered by formal procedures or written rules. Rather, "change is intrinsic to and can be invigorated of customary law."[30] Chuma Himonga predicts that "living customary law is likely to assume, if not maintain, a prominent position in African legal systems and to continue to regulate the lives of the majority of Africans on the African continent in the twenty-first century and beyond."[31]

Hence, the relationship between the law and African societies is still an unresolved mess. In their 1972 book, *Indirect Rule and the Search for Justice,* Morris and Read illuminated the mess that resulted from the co-existence of contradictory normative legal systems and ideologies.[32] What all this means is that the process of decolonization/decoloniality for Africa must involve the extrication and detachment from colonial legal and juridical processes. Our justice systems should reflect the realities on the ground. If the reality indicates that living customary law and community justice dominate the lives of African people, our attention should focus on them. Hence, the decolonization/decolonial project must work to transform the socialized (read colonized) minds of the elite minority by changing the legal educational model to adapt to the realities of *wananchi.*

Decolonized Customary Law

As part of the decolonization/decolonial project, there is a need to revisit Africa's legal systems and to reboot the mindset around which they were constructed. In particular, official "customary law" must be stripped of its colonial roots. Not only would this entail a total paradigm-shift that re-theorizes the implementation and methods of customary law, but also one that embraces non-

30. Quoted in the South African case of *Van Breda and Others v. Jacobs and Others* [1921] AD 330.

31. Chuma Himonga, "The Future of Living Customary Law in African Legal Systems in the Twenty-First Century and Beyond, with Special Reference to South Africa," in Jeanmarie Fenrich, Paolo Galizzi and Tacy Higgins (eds.), *The Future of African Customary Law,* pp. 31-57 (Cambridge: Cambridge University Press, 2011) at p. 32.

32. See e.g., Henry F. Morris and James S. Read, *Indirect Rule and the Search for Justice,* Note 22.

traditional informal justice systems. A key element in this would be renewed attention to the phenomenon of popular justice, moving away from legality and legitimacy to societal integrity.[33] This section examines these issues through an Afro-feminist lens, beginning with drawing a critical distinction between colonial "customary law" and living customary law. Next, it draws on three examples of traditional conflict resolution mechanisms to demonstrate how grassroots justice works on the ground. How does the principle of "due process" (or procedural justice) cohere with these non-Western legal cultures? This question is briefly addressed against the backdrop of the experiences of legal pluralism in Africa before finally examining the overarching theoretical approach of the notion of *Ubuntu* as a potential guiding principle and basis for the reinvigoration of African notions of social justice.

Colonial "Customary Law" versus Living Customary Law

Viewed through the colonial lens, customary law is perceived as exotic and even barbaric.[34] This form of Othering Indigenous laws and subordinating them to received state laws was part of the colonial agenda of consolidating imperial power. As stated earlier, it is crucial to understand the difference between the colonial product dubbed "customary law" and the Indigenous justice systems that existed in Africa prior to the advent of colonialism. Scholars have used various terms to make a clear distinction between the two systems. Terms to describe the colonial invention include: "official customary law" "state customary law" "lawyers' customary law" and "colonial customary law." On the other hand, references to Indigenous justice systems that are rooted in the multiple cultures found on the continent include terms such as "living customary law" "traditional customary law" "popular customary law" and "people's law."[35] For our purposes, this book will make a distinction

33. See discussion of *Martin Charo v Republic* in Patricia Kameri-Mbote, "Contending Norms in a Plural Legal System: The Limits of Formal Law," LL.D Dissertation, University of Nairobi (2019).

34. See e.g., Brian Tamanaha, "Understanding Legal Pluralism: Past to Present, Local to Global," *Sydney Law Review* 30 (2008): 375-411.

35. See Chuma Himonga, "The Future of Living Customary Law in African Legal Systems"

between colonial "customary law" and living customary law. Wherever we speak of colonial "customary law," the term "customary law" will be placed in inverted commas because it is, in reality, a misnomer coined by colonialists for their own ends.

Before discussing the details of the applicability of the different forms of customary law, it is imperative to appreciate what each one is about. Unlike received laws which are contained in neatly bound texts, customary law remains largely unwritten. It lives in the memories of people who practise it, passed on from generation to generation. It is based on the values, mores and traditions of communities, although today, its evolution is also heavily influenced by other forces including colonial and postcolonial processes.

The fact that customary law is not written posed a big problem for the colonialists. Unlike written codes and legislation which provide easy reference to particular laws, the Indigenous legal system was difficult to pin down. The positivistic theoretical framework that governed the law heavily relied on black-letter law. Even the British who had the Common Law tradition, which was unwritten, knew where to find its basic doctrines and principles. Common Law principles were articulated in judicial cases and preserved under the well-known rule of precedent. Precedent simply means that if a court is confronted with a case that constitutes facts and issues similar to a previous case, then the court is compelled to follow the ruling of the previous case. The centralism of written rules reinforced by the rule of judicial precedent were important as they provided confidence to the colonialists that the law would *consistently* protect their interests.

Hence, colonialists deemed customary law much too amorphous and variable. It lacked the certainty that was necessary to effectively police the colonies. But far from being amorphous, customary law was clearly known to the Indigenous people to whom it applied. They also knew that it developed from the ground and evolved over time. Living customary law moves with socioeconomic changes, although there will always be those who benefit from the old order and will argue against progress. Culture is a site of multiple

Note 31 at pp. 32-37; and Kristin Mann and Richard Roberts, *Law in Colonial Africa* (London: Heinemann, 1991) at p. 8.

possibilities where Indigenous groups, as agents, actively and strategically invent and reinvent themselves. An example of a customary practice that has evolved is the Kiganda Nakku practice dating back to the 13th century among the aristocracy. The norm required a new Kabaka (king) to have sex with a ritual wife called Nakku, believed to be the king-maker, on coronation day. She had to be a virgin and the copulation was a one-off affair, following which Nakku was supposed to live the chaste life of a spinster.[36] At the 1993 installation of Buganda's Kabaka Ronald Mutebi II, he rejected the Nakku ritual as being outdated for its insensitivity to gender justice.[37] Likewise, genital cutting, which was part of elaborate rites of passage rituals among many Kenyan communities, has evolved from excision of the genitals to minor symbolic genital nicks.[38] Sexual and reproductive justice for young women won over this age-old customary practice. The evolution is organic and, depending on the context, may take decades or even centuries to disappear. But many constitutions around the continent have also acted as catalysts to this evolutionary process when they specifically outlaw unfair discrimination on cultural grounds or allow for the promotion of culture on condition that it enhances human dignity. Feminists around the continent, in particular, have taken advantage of such provisions to accelerate cultural change by successfully challenging sexist cultural practices.[39]

By its very nature, as living law, customary law evolves and develops to meet changing communal needs; it corresponds to various pressures (socioeconomic and political) that push and pull communities in diverse directions. In the words of Thomas Spear:

36. See Sylvia Nannyonga-Tamusuza, "Female-Men, Male-Women, and Others: Constructing and Negotiating Gender among the Baganda of Uganda," *Journal of Eastern African Studies* 3(2) (2009): 367-380.

37. Ibid.

38. See *Tatu Kamau v. Attorney General & 14 Others* [2018] eKLR, available at: http://kenyalaw.org/caselaw/cases/view/154401 [accessed Jan 5, 2020]. Also see Hannelore Van Bavel, "At the Intersection of Place, Gender, and Ethnicity: Changes in Female Circumcision among Kenyan Maasai," *Gender, Place & Culture: A Journal of Feminist Geography* (May 2019): 1-22.

39. For a discussion of such cases see J. Oloka-Onyango, *When Courts do Politics*, Note 28; Saras Jagwanth and Christina Murray, "Ten Years of Transformation: How Has Gender Equality in South Africa Fared?" *Canadian Journal of Women and the Law* 14(2) (2002): 255-299. At the regional level, see Scholastica Omondi, Esther Waweru and Divya Srinivasan, *Breathing Life into the Maputo Protocol: Jurisprudence on the Rights of Women and Girls in Africa* (Nairobi: Equality Now, 2018).

"All were dynamic historical processes that reconstituted the heritage of the past to meet the needs of the present."[40] A good example is Rhiannon Stephens' careful historical research on marital arrangements in Uganda over twelve centuries, which clearly demonstrated "both a long-standing diversity in marriage and, crucially, a dynamism that enabled women and men to negotiate changing social and political realities by adapting the ways in which they constituted marital relationships."[41] While some aspects of colonial "customary law" may, at one point in time, overlap or interface with living customary law, with time the latter will overtake the former as it stretches and reforms into unrecognizable versions of its original form. Colonial conceptions of law find it extremely disturbing that the content of living customary law is not readily available and only resides within the communities subjected to its normative orders.[42] How is living customary law ascertained? This important issue has intensively preoccupied the jurisprudence in the Constitutional Court of South Africa, as we shall see later in the chapter.

By colonialists subjecting customary systems to judicial precedents and textbook analyses, it opened it up to the problem of distortion and ossification. The doctrine of precedent operates in most post-colonial African jurisdictions. It engenders some form of stability and continuity which is often at odds with the "living law" in traditional justice. As Charles Fombad points out, "Perhaps the most enduring effect of the colonial treatment of customary justice, from which it has not yet fully recovered, is the fact that its development was stifled, if not actually frozen."[43] Gender relations in colonial Africa were deeply affected by the re-invention of customary rules and mores. As Oyeronke Oyewumi reports: "In the process of the constitution of customary law, women were

40. Thomas Spear, "Neo-Traditionalism and the Limits of Invention in British Colonial Africa," *The Journal of African History* 44(1) (2003): 3-27 at p. 25.

41. Rhiannon Stephens, "'Whether They Promised Each Other Some Thing Is Difficult to Work Out': The Complicated History of Marriage in Uganda," *African Studies Review* 59(1) (2016): 127-153 at p. 129. Historian Stephens uses an interdisciplinary approach whereby she analyses archival material alongside historical linguistic reconstructions, comparative ethnography and oral traditions.

42. T. W. Bennett, "Re-introducing African Customary Law to the South African Legal System," *The American Journal of Comparative Law* 57(1) (2009): 1-32.

43. Charles M. Fombad, "The Context of Justice in Africa," Note 23 at p. 5.

excluded; their rights steadily eroded as new customs were fashioned mainly to serve male interests."[44] Colonialists disregarded the dynamism integral in customary law and set out to find ways of pinning it down. This was done by establishing rules by which the judiciary could prove the customary laws and practices of a society. In so doing, they adopted Eurocentric evidentiary rules that require witnesses: "As is the case with all customary law, it has to be proved in the first instance by calling witnesses acquainted with the native customs until the particular customs have, by frequent proof in the court, become so notorious that the courts will take judicial notice of them."[45] To-date, this evidentiary rule is still adhered to in many African countries, although it has been debunked in some, like Kenya.[46]

Apart from judicial precedents, customary law was ossified through other means. In particular, colonialists tried to reduce manipulated customs into fixed written rules with accompanying fixed punishments. Such codification was attempted in countries such as Tanganyika, Senegal and South Africa, thereby transforming a living law into an inflexible colonial residue.[47] Today Senegal has a law that specifies that only "officially recognised bodies of customs," consisting of 78 chosen from 33 ethnic groups, are legally applicable.[48] Another way that Europeans reduced customary law to a frozen relic was through an explosion of intellectual publications by Western legal anthropologists and sociologists who claimed to be experts on the contents of different native customs. Such texts were then used in educational institutions and by courts to validate colonial "customary law."[49] Yet

44. Oyeronke Oyewumi, *The Invention of Women: Making African Sense of Western Discourses* (Minneapolis: University of Minnesota Press, 1997) at p. 147.

45. *Angu v. Attah* [1916] Privy Council Appeals [1874-1928], 43 (Gold Coast). Also see David A. Nii-Aponsah, "The Rule in Angu v Attah Revisited," *Review of Ghana Law* 16 (1987-1988): 281-292.

46. See J. Oloka-Onyango, *When Courts do Politics*, Note 28 at pp. 209-10.

47. Thomas Spear, "Neo-Traditionalism and the Limits of Invention in British Colonial Africa," Note 40 at pp. 13-16.

48. Mastin W. Prinsloo, "Recognition and Application of Indigenous Law in Francophone Africa," Note 18 at p. 193.

49. For example, see Taslim Elias, *The Nature of African Customary Law* (Manchester: Manchester University Press, 1956); and Eugene Cotran, *Restatement of African Law, (Vols. I & II), Kenya I, The Law of Marriage and Divorce* (London: Sweet & Maxwell, 1968).

another effective way of "taming" customary law for the colonialists was to impose legislation that modified some of its features and practices. The French, for example, attempted to amend Indigenous laws with regard to land, imposing rules and concepts that were totally alien to the *wananchi*. Unsurprisingly, the latter promptly ignored such rules.[50] Similar stories abound in the rest of the continent.

African women became an effective tool to engender colonial representations of the continent as primitive and uncivilized. Colonialists did this by constructing an essentialized universal story of African women's cultural oppression through simplified and uncomplicated stories of traditional practices such as polygyny, "wife-inheritance," "female genital mutilation," and so forth. Edward Said used the term "orientalism" to describe colonial-inspired knowledge systems that rationalized subjugation.[51] Europeans needed to present their cultures as superior to others in order to create the justification for colonization as a civilizing mission. "Female genital mutilation" has always been a popular latch onto which colonialists have hooked their denigration of African cultures.[52] Wairimu Njambi calls for a closer scrutiny of female genital cutting (FGC), to take its complexities seriously. She explains how the practice worked among the Gikuyu of Kenya: "In colonial Kenya from the 1920s onward, the White settlers and missionaries structured the female circumcision controversy on familiar colonialist presumptions about who is civilized and hence authorized to act on behalf of the Other; a common justification for colonial rule that often focused on the protection of women from the supposedly backward traditions enforced by native men."[53] Indeed, "female genital mutilation" figured prominently in anti-colonial struggles and the making of the Kenyan nation, playing

50. Mastin W. Prinsloo, "Recognition and Application of Indigenous Law in Francophone Africa," Note 18 at pp. 190-191.

51. Edward Said, *Orientalism* (London: Routledge, 1978).

52. See Obioma Nnaemeka (ed.), *Female Circumcision and the Politics of Knowledge: African Women in Imperialist Discourses* (London: Praeger Publishers, 2005); and Anika Rahman and Nahid Toubia (eds.), *Female Genital Mutilation: A Guide to Laws and Policies Worldwide* (London: Zed Books, 2000).

53. Wairimu N. Njambi, "Irua Ria Atumia and Anti-Colonial Struggles Among the Gikuyu of Kenya: A Counter Narrative on 'Female Genital Mutilation'," *Critical Sociology* 33 (2007): 689-708 at p. 705.

an important role in the Mau Mau movement of nationalist revolution.[54] But today, women all over the continent are taking on the struggle to challenge FGC in ways that are culturally sensitive. In Egypt, for example, women opposed the practice by delinking it from Islam and exposing its patriarchal basis.[55]

When the colonialists invaded Africa, they disrupted the organic growth of the continent's sociopolitical processes. The "political geography" that existed in different parts of the continent included kingdoms, chiefdoms, mini-states, republics, sultanates and other traditional centres of power. Power and authority was vested in diverse political organizations that ranged from kings to titled chiefs, to councils of elders. All were supported by various executive, judicial, religious and legislative institutions, some fixed, others quite fluid and even overlapping. In order to achieve their imperial ambitions, colonialists shrunk the influence of these institutions and sharply curtailed their powers.[56]

While gender relations were far from being egalitarian, women played significant complementary roles in many of these sociopolitical arrangements.[57] With colonialism, a new form of patriarchy, previously unknown to Africans, was introduced, significantly diminishing the sociopolitical status of women in society. Coloniality altered Africa's gender ideology, transforming women's subjectivity and active agency. By turning the institution of the family or household into a corporate entity, for example, colonialism diminished the ways that women could navigate marital and marketplace spaces.[58] Juxtaposing what she refers to as "classic patriarchy" that engenders women's total dependence on

54. Ibid. Also see Amy Kaler, "African Perspectives on Female Circumcision," *Canadian Journal of African Studies* 43(1) (2009): 178-183.

55. See Nawal El Saadawi, "Women, Religion, and Postmodernism," in Obioma Nnaemeka and Joy Ngozi Ezeilo (eds.), *Engendering Human Rights: Cultural and Socioeconomic Realities in Africa*, pp. 27-36 (New York: Palgrave Macmillan, 2005).

56. See Apollo Makubuya, *Protection, Patronage or Plunder? British Machinations and (B)Uganda's Struggle for Independence* (Newcastle upon Tyne: Cambridge Scholars Publishing, 2018).

57. See Jean Allman, Susan Geiger and Nakanyike Musisi (eds.), *Women in African Colonial Histories* (Bloomington & Indianapolis: Indiana University Press, 2002).

58. See Maria Mies, *Patriarchy and Accumulation on a World Scale: Women in the International Division of Labour* (London: Zed Books, 2014).

men with what she terms "negotiable patriarchy" evident in many African contexts, Deniz Kandiyoti explains:

> [T]he insecurities of African polygyny for women are matched by areas of relative autonomy that they clearly strive to maximize. Men's responsibility for their wives' support, while normative in some instances, is in actual fact relatively low. Typically, it is the woman who is primarily responsible for her own and her children's upkeep, including meeting the costs of their education, with variable degrees of assistance from her husband. Women have very little to gain and a lot to lose by becoming totally dependent on husbands, and hence they quite rightly resist projects that tilt the delicate balance they strive to maintain. In their protests, wives are safeguarding already existing spheres of autonomy.[59]

Under negotiable patriarchies, African women's forms of subordination left immense flexibility and "wiggle room" for slippages, subjectivities, deviations and dialogue. Today, the kind of capitalist patriarchy we are fighting is borne out of the Western hegemonic worldview that constructs the generic human subject as male. Its institutions and ideologies are male dominated, pushing more than half of the continent's population into the margins of social existence.

An examination of the vast body of historical African sociopolitical traditions prior to colonization bears out the significant roles that women played in their communities. A few examples will suffice here. In all monarchical states, women wielded significant power in their roles as mothers and sisters of the king, acting as important counterweights against the king's power.[60] Historical records show that:

> In the royal family of Dahomey [located in present-day Benin], female

59. See Deniz Kandiyoti, "Bargaining with Patriarchy" *Gender and Society* 2(3) (1988): 274-290 at p. 277.

60. E.g., see Holly Hanson, "Queen Mothers and Good Government in Buganda: The Loss of Women's Political Power in Nineteenth Century East Africa," in Jean Allman, Susan Geiger and Nakanyike Musisi (eds.), *Women in African Colonial Histories*, pp. 219-236 (Bloomington & Indianapolis: Indiana University Press, 2002). Also see Laurence D. Schiller, "The Royal Women of Buganda," *International Journal of African Historical Studies* 23(3) (1990): 455-73.

dependents of the king served as 'ministers of state and counselors, as soldiers and commanders, as governors of provinces, as trading agents and as favoured wives.'[61] The Asante queen mother was co-ruler with the ruling chief; she participated in state councils not as a representative of women but as a preeminent authority in the state, and she determined who had the rights to claim leadership.[62] In Asante, Dahomey, Lagos and many other African polities, queen mothers built up political coalitions that brought their sons to power.[63]

African women also wielded political power indirectly through their religious key roles as spirit mediums, prophets and diviners in most communities.[64] Among the Igbo of present-day southeastern Nigeria, society had developed a dual-sex political system whereby an all-female political structure operated parallel to that of the all-male council on a complementary basis.[65] Gloria Chuku elaborates: "Women exercised direct political power within arenas viewed as the female province through all female organizations. Such female organizations included women's courts, market authorities, secret societies, and age-grade institutions. Women wielded collective and individual power as members and heads of these organizations respectively."[66] When the colonialists arrived on the continent, they effaced women's political institutions because, using their Eurocentric lens, they could only see and understand men's power.

Through indirect rule and other mechanisms discussed above, colonialists further consolidated power in men's hands, totally sidelining women. Using such processes, colonialists basically

61. Edna G. Bay, "Servitude and Worldly Success in the Palace of Dahomey," in Claire Robertson and Martin Klein (eds.), *Women and Slavery in Africa*, pp. 340-67 (Madison: University of Wisconsin Press, 1983) at p. 340.

62. Agnes Akosua Aidoo, "Asante Queen Mothers in Government and Politics in the Nineteenth Century," in Filomina Chioma Steady (ed.), *The Black Woman Cross-Culturally* (Cambridge, MA: Schenkman, 1985), pp. 65-77.

63. Holly Hanson, "Queen Mothers and Good Government in Buganda," Note 60 at p. 220.

64. Edward Evans-Pritchard, *Theories of Primitive Religion* (Oxford: Oxford University Press, 1965).

65. See Nkiru Nzegwu, "Gender Equality in a Dual-Sex System: The Case of Onitsha," *Canadian Journal of Law and Jurisprudence*, 7 (1) (1994): 73-95; also see Gwendolyn Mikell, (ed.), *African Feminism: The Politics of Survival in Sub-Saharan Africa* (Philadelphia: University of Pennsylvania Press, 1997).

66. Gloria Chuku, "Igbo Women and Political Participation in Nigeria, 1800s-2005", *The International Journal of African Historical Studies* 42(1) (2009): 81-103, at p. 84.

worked hand-in-hand with African patriarchs (male chiefs, elders and headmen) to develop inflexible customary laws that evolved into new structures and forms of domination, particularly along the lines of gender.[67] It was expedient for colonialists to navigate issues of custom and tradition through the institutions of male traditional leaders, usually after placating them with gifts and handouts. Thus, state "customary law" is in fact a product of the relationship between African male patriarchs and the colonial state which was anxious to reinforce traditional forms of authority over women.[68]

To conflate the normative force of customary law with the power of traditional institutions of kings and chiefs is to completely miss the point of the nature of living customary law. The latter draws its force not from a traditional sovereign but from "a multiplicity of authorities, through processes that are ultimately embedded in the everyday constitution of the social world itself."[69] Hylton White elucidates further:

> To be clear, this is not to suggest that there are no decisive links between the customary and the political, nor that we should revert to understanding custom naively as an autonomous cultural repertoire, only secondarily joined to given historical worlds. Instead I take as a starting point that customary norms, like any norms, exist in fields of human interaction that are organised by historically dynamic institutions and social forms. My point is that the morphology of these social forms should not be reduced to the management of subjects by their territorial sovereigns.[70]

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67. See Martin Chanock, "Making Customary Law: Men, Women, and Courts in Colonial Northern Rhodesia," in Margaret Jean Hay and Marcia Wright (eds.), *African Women and the Law: Historical Perspectives*, Boston University Papers on Africa, no. 7, pp. 60-65 (Boston: Boston University, 1982); and M. F. C. Bourdillon, "Is 'Customary Law' Customary?" *Native Affairs Department Annual* 11(2) (1975): 142-43.

68. See Martin Chanock, *Law, Custom, and Social Order: The Colonial Experience in Malawi and Zambia*, (Cambridge: Cambridge University Press, 1985).

69. Hylton White, "Custom, Normativity and Authority in South Africa," *Journal of Southern African Studies* 41(5) (2015): 1005-1017, at p. 1005. Also see A. Claassens, "Customary Law and Zones of Chiefly Sovereignty: The Impact of Government Policy on Whose Voices Prevail in the Making and Changing of Customary Law", in A. Claassens and B. Cousins (eds.), *Land, Power, and Custom: Controversies Generated by South Africa's Communal Land Rights Act*, pp. 355-82 (Cape Town: UCT Press, 2008).

70. Hylton White, "Custom, Normativity and Authority in South Africa," Note 69 at p. 1007.

Having lost most of their power to the colonialists, African patriarchs were interested in preserving their domination over various social groups such as women. And because colonial "customary law" does not adapt to change, its tendency is to maintain outmoded and ossified ideas and harmful norms even when society has moved on. This is the main reason why feminists tend to pit the concepts of "culture" and "rights" as antagonistic, existing with inherent tensions and irreconcilably opposed to each other. This position is based on the colonial conception of "customary law" that is inimical to reform.[71] Our decolonial efforts must therefore shift the focus to the practice of living customary law and its amenability to change. African women have a say in how living customary law develops and the challenge is how to protect the space where such shifts happen.[72]

Colonialists were especially interested in native customs that promoted their imperialist agendas of exploitation and control. Referring to an example from Zimbabwe, Elizabeth Schmidt explains:

> While custom had been both flexible and sensitive to extenuating circumstances, 'customary law,' now written in stone, was not. This transformation was particularly striking in child custody cases, where colonial authorities attempted to control women by using their children as bait. According to Shona and Ndebele custom, bridewealth payments conferred upon men rights over their children. Thus, fathers were usually awarded custody in the event of marital breakdown. Occasionally, however, mothers and their kin might be considered the preferred guardians, particularly if the fathers' kin could not adequately support the children. Colonial officials refused any such flexibility. Intent upon applying hard-and-fast rules based upon immutable

71. See Sylvia Tamale, "The Right to Culture and the Culture of Rights: A Critical Perspective on Women's Sexual Rights in Africa," *Feminist Legal Studies* 16 (2008): 47-69; also see Jane Cowan, Marie B. Dembour and Richard Wilson (eds.), *Culture and Rights: Anthropological Perspectives* (Cambridge: Cambridge University Press, 2001).

72. Dee Smythe and Stefanie Röhrs, "In Search of Equality: Women, Law and Society in Africa," in Stefanie Röhrs and Dee Smythe (eds.), *In Search of Equality: Women, Law and Society in Africa*, pp. 1-18 (Cape Town: University of Cape Town Press, 2014) at p. 5.

principles, they invariably favored fathers over mothers, husbands over wives—all in the name of 'respect for native custom'.[73]

Other traditions that were corrupted in similar ways included the interpretation of institutions such as *lobola* (bridewealth), polygyny and so-called wife inheritance.[74]

Prior to the colonial period, a deserted husband was much more likely to petition for his wife's return—even over the course of several years—than attempt to get his bridewealth back. Generally, he had no interest in severing the ties between his wife's lineage and his own, which the return of bridewealth was bound to do. If a husband had been brutal, a woman's family was unlikely to force her to return, relying instead on time to heal the wounds and resolve the conflict. But when native commissioners began to prescribe divorce and the return of bridewealth as a remedy for women's desertion or adultery, families began pressuring their daughters to remain in potentially life-threatening situations.[75]

Between such bastardized traditions, the received Victorian-era conservative laws and new morality based on alien religions, the status of African women was redefined, completely changing the rules of the "patriarchal game" on the continent. Thus, colonial "customary law" was born, ossified—like the dry bones of a skeleton—then fossilized and frozen. The aim was to deprive African traditional norms of the oxygen that kept them alive to thrive and instead, cast them in stone like the biblical Ten Commandments. African jural communities that practised living customary law transcended the colonial straitjacket of state "customary law." And, in as far as living customary law facilitates flexibility and responds to change, it is superior to received laws. Another form of conflict resolution that resonates with most Africans is found in the informal mechanisms of community justice

73. Elizabeth Schmidt, "Patriarchy, Capitalism, and the Colonial State in Zimbabwe" *Signs: Journal of Women in Culture and Society* 16(4) (1991): 732-756 at p. 751.

74. For good examples of a historic misinterpretations of the *lobola* tradition, see Karen Sacks, *Sisters and Wives: The Past and Future of Sexual Equality* (Westport, CT: Greenwood Press, 1979); and Catherine Coquery-Vidrovitch, *African Women: A Modern History* (Trans. by Beth Raps), (Boulder, CO: Westview Press, 1997).

75. Elizabeth Schmidt, "Patriarchy, Capitalism," Note 73 at p. 752.

that exist in the shadows of the state. I now turn to an examination of the manner in which these institutions operate.

Non-Traditional Informal Justice and Conflict Resolution

Just as water always finds its way through the tiniest of cracks, so too do people always find their way around and through the cumbersome and alienating state laws when seeking justice. They will strategically invoke legal pluralism by pragmatically and creatively combining the plural legal context in which they live, with the goal of achieving justice. By so doing, they reject and transform colonial relations of power and ways of relating. Claassens and Mnisi provide a useful summary:

> In the context of overlapping international instruments, state law, informal local law and customary regimes, people tend to 'mix and match', drawing on whichever authority, law or 'right' best advances their specific interests in those instances. Implicit in the pluralist position is that claims are forged at the interface between overlapping systems of law and custom which combine the 'imported' and the local, the formal and the informal. Hence, nowhere can 'rights' or custom be said to exist or operate in isolation from the other.[76]

So, in addition to living customary law, *wananchi* devise their own systems of navigating social disputes and conflict, collectively referred to as "community justice."[77] Sometimes referred to as "popular justice," we shall use the two terms interchangeably in this book. While popular justice has its deepest roots in African traditional practices, it should not be confused with customary

76. Aninka Claassens and Sindiso Mnisi, "Rural Women Redefining Land Rights" Note 11, at p. 497. Also see Celestine Nyamu-Musembi, "Are Local Norms and Practices Fences or Pathways? The Example of Women's Property Rights," in Abdullahi Ahmed An-Na'im (ed.), *Cultural Transformation and Human Rights in Africa*, pp. 126-150 (London: Zed Books, 2002).

77. Community justice is further broken down into the sub-branches of "popular justice" and "private justice." The former refers to rules and procedures of justice that are organically produced by citizens (as opposed to state-produced), while the latter are alternative dispute resolution (ADR) mechanisms usually operated through non-governmental organizations (NGOs). See Daniel Nina and Pamela Jane Schwikkard "The 'Soft Vengeance' of the People" Note 5 at p. 73.

law.[78] As we have seen, the normative and institutional dimensions of customary law have been appropriated and vulgarized by the neocolonial state. The concern here is to document and analyze "other forms of social regulation that draw on the symbols of the law, to a greater or lesser extent, but that operate in its shadows, its parking lots, and even down the street in mediation offices."[79] After all, plural normative orders lie on the same plane as formal law and are all intertwined in similar micro processes.[80]

Although colonial and Eurocentric legal theories are reluctant to view such mechanisms as falling within the realm of law, we must examine these informal or community-based initiatives as part of Africa's decolonization of the justice system. Part of the reluctance to embrace popular justice by professional lawyers is that they see it as encroaching on their territory and resources. As grassroots systems, these informal non-state institutions have delivered effective dispute resolution at community levels both in African rural and urban settings. The fact that they are cheap, accessible, familiar, expeditious, restorative, relevant, flexible and resilient endears them to *wananchi*.[81] Its philosophical foundation stems in the belief of "justice for all." It especially works for poor and vulnerable groups such as women who cannot relate to the alienating and inaccessible state-based colonial systems. There are thousands of examples to illustrate how African women rely on a mix of values embedded in custom and constitutional notions of democracy and non-discrimination to challenge the status quo or to assert claims for justice.[82] Most of these take place outside the staid walls of courtrooms or other formal justice institutions; they

78. Boaventura de Souza Santos, "From Customary Law to Popular Justice," Note 9.

79. Sally Engle Merry, "Legal Pluralism," Note 3 at p.874.

80. John Griffiths, "Introduction," A. Allott and G. Woodman (eds.), *People's Law and State Law: The Bellagio Papers*, (Dordrecht: Foris, 1985) at pp. 13-20 cited in Merry, ibid. at p. 873.

81. Minneh Kane, J. Oloka-Onyango and Abdul Tejan-Cole, "Reassessing Customary Law Systems as a Vehicle for Providing Equitable Access to Justice for the Poor," Working Paper produced for the World Bank conference, *New Frontiers for Social Policy: Development in a Globalizing World*, December 12-15, 2005. Available at: http://siteresources.worldbank.org/INTRANETSOCIALDEVELOPMENT/Resources/Kane.rev.pdf [accessed Nov 11, 2019].

82. A good example is given by Claassens and Mnisi based on their research observations of rural women's claims for land in South Africa. See AninkaClaassens and Sindiso Mnisi, "Rural Women Redefining Land Rights," Note 11, pp. 499-502.

happen in family discussions, at clan meetings, in village councils and so forth.

Most notably, community or popular justice has always enjoyed its maximum favour on the continent in the immediate aftermath of successful guerrilla-driven liberation movements that usher in popular democracy. This was evidenced in countries like Angola, Mozambique, Rwanda, Uganda, Zimbabwe and the Democratic Republic of Congo.[83] For example, after Mozambique received flag independence from Portugal, it embarked on dismantling colonial state apparatuses. They established in their stead a legal system that was based on popular justice (*justiça popular*).[84] The Popular Tribunal was established with its jurisdiction residing outside the formal sources of law and custom. Its role was to build a foundation for reconciliation and where that failed its lay judges were then to determine their decisions "in accordance with good sense and justice, and bearing in mind the principles that guide the building of a socialist state."[85] Aase Gundersen reports that the sanctions of the Tribunal did not include prison sentences, but rather, "public criticism, community work of up to thirty days and monetary fines and compensation."[86] Unfortunately, many of these post-guerrilla populist initiatives are in due course coopted by state-centred agendas when "the traditional 'guardians' of the law reassert their hegemony."[87]

Hence, local communities establish their own "laws" or rules and create their own notions of justice in a representative and most meaningful fashion. Such rules are unwritten, imprecise, flexible, ad hoc and particularistic.[88] While the enforcement of law-in-the-

83. See J. Oloka-Onyango, "Grassroots Democracy and the National Resistance Movement in Uganda," *International Journal of the Sociology of Law* 17 (1989): 465-480. Also see Boaventura de Souza Santos, "From Customary Law to Popular Justice," Note 9.

84. Albie Sachs and Gita H. Welch, *Liberating the Law: Creating Popular Justice in Mozambique* (London: Zed Books, 1990).

85. See Article 38 of the Judicial Organisation Act, 1978.

86. Aase Gundersen, "Popular Justice in Mozambique: Between State Law and Folk Law," *Social and Legal Studies* 1 (1992): 257-282 at p. 257.

87. See John-Jean Barya and J. Oloka-Onyango, *Popular Justice and Resistance Committee Courts in Uganda* (Kampala: New Vision Printing & Publishing, 1994) at p. 35.

88. Richard L. Abel, "Introduction", in Richard L. Abel (ed.), *The Politics of Informal Justice, Volume 2: Comparative Perspectives*, (New York: Academic Press, 1982) at p. 2.

books may be extremely challenging in Africa, the social rules and norms of any community are routinely enforced by the people. Organs of community justice include efforts such as neighborhood watch, business watch and local councils. It is these regularized complex patterns of social behaviour that maintain social order. This is regardless of the fact that those rules and norms contradict the written law in the books. It is almost futile to impose formal structures on social processes. To appreciate how community justice works, we shall elaborate using three examples, two from Uganda and one from Rwanda.

The Gacaca Process

Between April and July 1994, the East African country of Rwanda witnessed a horrific genocide in which Hutu extremists exterminated Tutsis and Hutu moderates in their hundreds of thousands.[89] This was the culmination of a revived power struggle between the two major Rwandese ethnic groups whose genesis can be retraced to Belgian colonial policies that entrenched definitive identity politics between the two.[90] The international oath of "Never Again" sworn at Nuremberg following the Jewish holocaust had been brazenly broken. In the aftermath of the atrocities, on November 8, 1994, the United Nations set up an ad hoc tribunal in the town of Arusha, in neighbouring Tanzania to conduct criminal trials of suspected perpetrators, restore peace and promote reconciliation.[91]

After the realization that the International Criminal Tribunal for Rwanda (ICTR) based in Arusha would not be likely to address the massive justice issues and the ethnic tensions engendered by the genocide in Rwanda, the country resorted to non-state community justice in the form of *Gacaca* (Kinyarwanda for "judgment on the

89. See Jennie Burnet, "Whose Genocide? Whose Truth? Representations of Victim and Perpetrator in Rwanda", in Alexander Laban Hinton and Kevin Lewis O'Neill (eds.), *Genocide: Truth Memory and Representation*, pp. 80-100 (Durham, NC: Duke University Press, 2009).

90. See Helen Hintjens, "When Identity becomes a Knife: Reflecting on the Genocide in Rwanda," *Ethnicities* 1(1) (2001): 25-55.

91. See François-Xavier Nsanzuwera, "The ICTR Contribution to National Reconciliation," *Journal of International Criminal Justice* 3 (2005): 944-949.

lawn") courts.[92] Given the extensive nature of the genocide, there were more offenders and offences against humanity in Rwanda than the "modern" colonial prisons could accommodate. The entire country was affected by the trauma, mistrust and fear and the colonial justice system was ill-equipped to deal with the enormity of the tragedy. On its part, the ICTR was designed to address only a small number of offenders. This is how the Rwandan government was forced to reimagine and re-invoke the traditional justice system of *Gacaca* despite the fact that it had never dealt with crimes of this proportion.

By its very nature this pragmatic and community-based model of restorative justice was meant to repair harm, heal psychological wounds and restore offenders to a healthy relationship with the community.[93] Like many African traditional justice systems, *Gacaca* was backed by the philosophy of reconciliation and reparation as opposed to incarceration and retribution. It dealt with all manner of conflicts from disputes relating to land and family to those involving pastoral activities and, on occasion, even murders. Although the traditional *Gacaca* village tribunals were dominated by male judges, women played important behind-the-scenes roles that swayed final decisions.[94] The procedures were serious but informal and flexible, focused on achieving reconciliation and social harmony. The process involved not individual disputants but their families and this system of collective responsibility meant that the penalties were shared by the entire family of the offender.[95] For example, the offender's family would be required to acknowledge the harm inflicted and to compensate the victim's family through an exchange of animals; afterwards the two families would drink

92. See Bert Ingelaere, *Inside Rwanda's Gacaca Courts: Seeking Justice after Genocide* (Madison: University of Wisconsin Press, 2016); and Phil Clark, *Distant Justice: The Impact of the International Criminal Court on African Politics* (Cambridge: Cambridge University Press, 2018).

93. Alana Tiemessen, "After Arusha: Gacaca Justice in Post-Genocide Rwanda," *African Studies Quarterly* 8(1) (2004): 57-76 at pp. 60-64.

94. Arthur Molenaar, "Gacaca: Grassroots Justice after Genocide," Report by the African Studies Center, Leiden (2005), available at: https://openaccess.leidenuniv.nl/bitstream/handle/1887/4645/ASC-1236144-071.pdf;sequence=1 [accessed December 20, 2019].

95. Ibid. at p. 14.

beer (provided by the offending family) together in a reconciliatory manner.[96]

While there were some criticisms of the mechanism,[97] a local populist response to a populist genocide proved much more effective than the formal international justice dispensed out of far-flung Arusha. The new post-genocide *Gacaca* tribunals were a hybrid of domestic formal and informal justice and were instituted by parliamentary legislation in 2001.[98] Although the tribunal retained some of the popular justice characteristics of old (e.g., easily accessible, highly participatory, held on the lawn and aimed at reconciliation), Rwanda's ancestors would cringe at some of its new institutionalized adaptations. For example, the new *Gacaca* were governed by the received colonial laws and were fully incorporated into the state legal system, including the punishment of incarceration.[99] Their hierarchal and structured nature totally diminished the flexibility and ad hoc nature of the old process. At the end of the day, the reinvented *Gacaca* got mixed reviews:

> Gacaca has reoriented the course of Rwandan justice by emphasizing confession, apology, and forgiveness. The alternative—the continued imprisonment of 125,000 genocide suspects—was both untenable and undesirable. But by attempting to strike a middle ground between punitive and restorative justice, the government has undermined gacaca. Although the threat of punishment undoubtedly elicited some confessions, it also encouraged lies, half-truths, and silence.[100]

But the most important and positive difference between the old and the new *Gacaca* process was that it involved local women who suffered untold atrocities and were key not only to the

96. Ibid. at p. 15.

97. E.g., see Coel Kirkby, "Rwanda's Gacaca Courts: A Preliminary Critique," *Journal of African Law* 50(2) (2006): 94–117; and Ariel Meyerstein, "Between Law and Culture: Rwanda's Gacaca and Postcolonial Legality," *Law and Social Inquiry* 32(2) (2007): 467-508.

98. See Loi organique n 40/2000 du 26/01/2001 portant création des juridictions gacaca et organisation des poursuites des infractions constitutives du crime de génocide ou de crimes contre l'humanité, commises entre le 1er octobre 1990 et le 31 décembre 1994.

99. See Alana Tiemessen, "After Arusha," Note 93.

100. Max Retting, "Gacaca: Truth, Justice, and Reconciliation in Postconflict Rwanda?" *African Studies Review* 51(3) (2008): 25-50 at p. 44.

socioeconomic life of the country, but to the restoration of its vitality and civic order.[101] Women participated as judges, witnesses and organizers, thus recognizing their role in the reconciliation process, and bringing their identity beyond that of victim to the process.[102] While the entire *Gacaca* process lasted only a brief ten years, it brought more people to trial than the ICTR, transnational trials, and the formal courts combined.[103]

Mato Oput

Community justice was at play in the traditional conflict mechanism of the Acholi in northern Uganda during the conflict which afflicted the community from the early 1990s until very recently.[104] Indigenously referred to as *Mato Oput* (to drink the bitter potion from the leaves of the oput tree), this home-grown conflict resolution mechanism has sustained local communities for centuries.[105] After the 18-year-long insurgency in northern Uganda between Joseph Kony's Lord's Resistance Army (LRA) and the government of Uganda had ended, the ICC indicted Kony in 2003.[106] The conflict had led to some of the worst humanitarian crises in human history. Kony and his key commanders were charged with numerous violations including massacres, abductions, sexual enslavement, mutilation and torture and using child soldiers.[107] However, the locals in Acholi, who suffered the brunt of the conflict,

101. Jennie Burnet, "Gender Balance and the Meanings of Women in Governance in Post-Genocide Rwanda," *African Affairs* 107/428, (2008): 361–386.

102. Alana Tiemessen, "After Arusha," Note 93 at p. 63. The downside to the *Gacaca* model in dispensing restorative justice was that its processes became highly politicized. The fact that it represented a state-imposed "modernized" model of the traditional process meant that there were elements of state interests embedded in what Tiemessen characterized as "a Tutsi ethnocracy." Ibid.

103. Between 2002 and 2012, 11,000 *Gacaca* forums were held at community level and 400,000 thousand genocide suspects were prosecuted. See Phil Clark, *Distant Justice,* Note 92 at p. 231.

104. See Phil Clark, *Distant Justice,* Note 92.

105. Abdul Karim Bangura, "The Politics of the Struggle to Resolve the Conflict in Uganda: Westerners Pushing Their Legal Approach versus Ugandans Insisting on Their Mato Oput," *The Journal of Pan African Studies* 2(5) (2008): 142-78.

106. Ibid.

107. Kasaija Apuuli, "The ICC Arrest Warrants for the Lord's Resistance Army Leaders and Peace Prospects for Northern Uganda," *Journal of International Criminal Justice* 4 (2006): 179-187.

immediately rejected the European-based tribunal, preferring to dispense their own traditional justice. The competing values between modern/colonial and Indigenous methods of resolving conflict were captured by President Museveni who stated: "What we have agreed with our people is that they should face traditional justice, which is more compensatory than a retributive system." He then asked: "If that's what the community wants, then why would we insist" on a trial in The Hague?[108]

The process of *Mato Oput* is about reconciliatory truth-telling and involves the participation of both men and women in the community. It is invoked in cases of intentional or unintentional murders to reconcile the clans of the concerned parties. This complex and drawn-out process involves the following:

> Truth-telling is a key first step toward reconciliation, usually taking the form of negotiations. Elders are enlisted as mediators and engage in shuttle diplomacy between the two clans to establish the facts of what occurred… During this initial step, witnesses from both sides are invited to share what they know until all can agree on what took place. There is no timeline for this process and it can often take years. Once the truth has been established, compensation is decided upon and the elaborate *mato oput* ceremony takes place… Each side is required to provide materials for the ceremony, from goats and sheep to new calabashes, *kwete* (local brew), and roots from the *oput* tree. Though the specifics of *mato oput* differ across clans, they all share the same general principles of voluntariness, mediation of truth, acknowledgment of wrongdoing and reconciliation. The ceremony itself generally involves ritual killing of sheep or goats, the sharing of a large meal, and drinking of *kwete* mixed with the *oput*. The ceremony as a whole symbolizes the end of bitterness between the two groups and the restoration of relations. It hinges on the perpetrator's admittance of guilt during the negotiation (truth-telling) phase and the victim's willingness to forgive.[109]

108. See Abdul Bangura, "The Politics of the Struggle," Note 105 at p. 143.

109. Vicki Esquivel-Korsiak and Kate Lonergan, "The First Steps Towards Reconciliation: The Role of Truth-Telling in Acholi Traditional Ceremonies" (Gulu, Uganda: Justice and Reconciliation Project, 2018). Available at: http://www.justiceandreconciliation.org/uncategorized/2013/the-first-step-towards-reconciliation/ [accessed July 22, 2019].

Just like the traditional-based institution of *Gacaca*, *Mato Oput* beams important beacons of justice, namely, legitimacy, accountability and integrity. Additionally, unlike the largely male-dominated formal systems of dispute resolution, women are fully integrated into these community-based mechanisms as full community citizens. Indeed, mechanisms such as *Mato Oput* hold great potential for managing and responding to sexual and gender-based violence issues which are endemic in our societies.

Kampala City Traders Association

The Uganda-based Kampala City Traders Association (KACITA) is a prominent example of a business watch initiative, with the motto "Together we stand, divided we fall." They have striven to live by it. And yet, KACITA was established "by default" when government failed to address the concerns of business people in the Ugandan capital city.[110] In the aftermath of the 2001 elections, informal street and market vendors were emboldened by the support and goodwill they had received from the campaigning candidates. They flooded the streets with their wares, clogging pedestrian pavements and obstructing shop display windows to the chagrin of formal business people. "They went on the rampage to the extent that you could find a tomato seller obstructing the gates of Bank of Uganda."[111] The traders' efforts to solve this problem via state institutions such as the Uganda Chamber of Commerce, the Private Sector Foundation and the Mayor's office were all fruitless. That is when Kampala's traders decided to explore other means.

> We mobilized Kampala traders to fight for our businesses and took action by closing all shops in the city. This gave us leverage to negotiate with the state, which then took action. After that we decided to form an association. Because of all the problems that we face in our work, we realized that ad hoc arrangements could not work. And here we are,

110. Author's interview with KACITA Board Chairperson, Mr. Everest Kayondo (July 25, 2019 in Kampala).

111. Everest Kayondo, Chairperson of the KACITA Board of Directors (Interview with author, July 25, 2019 in Kampala).

eighteen years later, a respected and very effective association with over 20,000 members.[112]

KACITA re-registered in 2009 as a national association and opened up regional offices throughout the country. Among the many services that the association offers to its members and affiliates is the mediation of business conflicts.[113] In reality, any individual with a trade-related dispute walks to their busy mediation desk and they never turn anyone away. Business people prefer using their services to those of the Commercial Court because formal litigation is expensive, time-consuming and fraught with manipulation and corruption. They feel that, "unlike judges who are often out of touch with the problems we face on the ground, traders really understand each other and know how to deal with our disputes in a just manner."[114]

Indeed community justice was served in the three cases described below:[115]

Case # 1

In order to supplement her income, Solome—a rural-based teacher—planted one acre of maize and realized a bumper harvest. She asked her worker Opendi to go to Kampala in search of buyers. Opendi returned with businessman Rukundo who agreed to buy all the maize. He promised to pay the full amount as soon as all the maize had been loaded on his truck. The loading took a long time and ended at 1.00 am in the night. Rukundo assured Solome that he would pay her at the start of business in the morning. Opendi went to Rukundo's office the following morning but the latter told him to return the following day. This went on for weeks until a friend advised Solome to go to KACITA. At the mediation table, Rukundo claimed that he had given Opendi half of the purchase money the day after loading the maize. First, KACITA requested Rukundo to pay Solome the other half of the purchase price which he admitted as owing. The following week, Rukundo paid half of the purchase price to Solome in the KACITA office and made her sign several papers

112. Ibid.

113. See https://www.kacita.co.ug/ [accessed July 26, 2019].

114. Per Sarah Kasule, KACITA member, interview with author, July 26, 2019 at Kampala.

115. The three examples are based on real cases with names disguised for confidentiality.

acknowledging receipt. The KACITA mediator then asked Rukundo to bring the papers that Opendi signed when he gave him the first half of the payment. Rukundo produced some papers but on close scrutiny, Opendi's handwriting and signature did not match the one on Rukundo's papers. KACITA concluded that Rukundo had forged Opendi's signature. Later, Rukundo admitted to the fraud and requested that Solome gives him a payment schedule for the balance, which he went on to pay in instalments.

Case # 2

Kato, a trader, travelled 70 kilometres from Mityana to Kampala and bought a total of six brand new truck tyres from a businessman, one Mugisha. Within one month of using the tyres, they had all burst and been rendered useless. Kato returned to Mugisha complaining about the substandard merchandise he had sold him. He feared that Mugisha had sold him expired goods. Mugisha's response was to show Kato the small print on the purchase receipt: "Goods once sold are not returnable." Those words, based on the legal principle of "caveat emptor" (Latin for buyer beware) mean that buyers have the responsibility to check the quality and suitability of goods before paying for them. Kato was devastated until his friend advised him to seek redress from KACITA, and that is what he did. Mugisha snubbed KACITA's invitation to go to their office for mediation. Then the mediator went to Mugisha's shop, in another attempt to engage him, but the latter chased him away. So what KACITA did was to invite the government quality enforcement agency (Uganda National Bureau of Standards-UNBS) to check out Mugisha's stock of tyres. As soon as UNBS contacted Mugisha, he came running to the KACITA office with Kato's full refund.

Case # 3

Nafula is the wife of a senior police officer in Kampala and she trades in imported garments from Dubai. On one business trip to Dubai, she purchased and packed garments in three bales marked with her name and contact. She then placed the bales in a shipping container that was shared with other importers in order to cut shipment costs. Before the container left the warehouse in Dubai, another unscrupulous trader, one Babirye, bought three new bale sacks and placed them over each of Nafula's bales. Babirye then relabelled Nafula's bales with her own name and contact. When the container arrived in Kampala, Babirye claimed the bales as hers. A few weeks later, a

customer visited Nafula's shop and remarked that she had seen the exact designs in another shop with a much smaller price tag. Nafula got suspicious and requested the customer to take her to this shop. After looking at the garments on display in Babirye's shop, she was convinced that they were the ones in the "disappeared" consignment. Nafula reported this to her law enforcement husband, who in turn run to KACITA for help. KACITA confronted Babirye and asked her to produce the commercial invoices and other relevant documentation relating to the garments in her shop. Babirye failed to produce them and eventually admitted to her thievery. With KACITA's help, Nafula was able to retrieve most of her merchandise and compensation for what had already been sold.

In all the three examples above justice was served in a matter of weeks without the formalistic, tedious and costly processes associated with the commercial court. If formal justice systems are dysfunctional for the majority of Africans, it is worse for women who are subordinated through various gender inequities. Hence, as people who largely represent the face of poverty on the continent, women greatly benefit from community justice.

Every year KACITA handles hundreds of business disputes. Even foreign business people who have disputes with Ugandan counterparts fly into the country to have KACITA mediate. Being traders themselves, the personnel at KACITA clearly appreciate the trading conditions on the ground that their clients face on a daily basis. Therefore, they are more flexible and tolerant when communicating to the disputants. The office is approachable and friendly. The board also ensures that their staff is made up of people with impeccable integrity. All this has helped the association to gain the trust and confidence of business people to dispense justice. So much so that even the Ministry of Trade often refers clients to KACITA. The fact that government agencies and agents (like Nafula's husband) prefer community justice to the traditional judicial system speaks volumes about the relevance and success of the former process.

There are more examples to demonstrate how women greatly benefit from decolonized popular justice. Women stand to gain from popular justice when it comes to disputes related to marriage and property. Over 90 percent of Africans cohabit without

formalizing their "marriages" either customarily or through colonial formal procedures. Often, when the relationship breaks down or in the case of the man's demise, women are chased away from their "marital" homes of several years or even decades without a share of the "matrimonial" property and the resources that they helped to amass over the years. Formal colonial courts and their "legal eyes" remain blind to the plight of such women and disqualify them as rights holders, coldly chasing them away empty-handed. Now, where colonial courts invisibilize such vulnerable women, popular justice fills the vacuum by giving audience to such women and responding to their grievances in a just and pragmatic fashion.

Popular Justice and Due Process

Given the contradicting philosophies and differing internal practices, the tensions in the processes of community justice and formal justice are never far from the surface. Many times, when community justice runs counter to state laws or when it challenges state mechanisms of social control, it is outlawed.[116] The vitiating laws are usually ignored by *wananchi*, sending the clear message that the state does not have a monopoly of social control. This was well demonstrated by the *Gacaca* case. International organizations such as Amnesty International (AI) were at the forefront of holding the new *Gacaca* process to international human rights standards, particularly those related to due process.[117] AI declared that it firmly believed that, "the fairness of *gacaca* hearings is dependent upon the broader human rights context in which the trials will take place."[118] It was particularly concerned that Article 14(2) of the International Covenant on Civil and Political Rights that prescribes minimum standards for a fair trial were violated in the *Gacaca* process. While this may be true, there is a need for more nuance when looking at

116. See Daniel Nina and Pamela Jane Schwikkard "The 'Soft Vegeance' of the People" Note 5 at p. 72.

117. See e.g., Amnesty International, "2002. Rwanda—Gacaca: A question of justice" (2002), available at: https://www.amnesty.org/en/documents/afr47/007/2002/en/ [accessed January 05, 2020].

118. Ibid. at p. 47.

traditional forms of legal process than simply the Black letter of the law.

In essence, AI's critique rushes to impose a Western legal paradigm on a complex traditional judicial process. The critique attempts to impose a Western model of justice on the operation of *Gacaca*, ignoring the fact that many continental (European Civil Law) systems adopt standards—for example the presumption of guilt—which may run counter to this Western ideal. Thus, AI's critique must be read with a pinch of salt, especially given the colonial imperative which drove the establishment of the human rights movement and its complicity in Western political agendas. The ideals and assumptions that undergird traditional jurisprudential principles do not necessarily hold sway in postcolonial contexts. Balakrishnan Rajagopal described the reaction of AI as a consolidation of hegemonic international law,[119] while Ariel Meyerstein views it as the "jurispathic" imposition of positive law into African law and culture.[120] In sum, the participants of *Gacaca* and those from AI were reading from different "scripts" regarding the nature and purpose of justice.

It must be noted that community justice does not make a formal demarcation between civil and criminal law. In cases such as rape or murder, the families of the victim and of the perpetrator(s) will be called before the community-based arbiters in search of justice. The basic principles of due process and fair procedures as known in state-law are not necessarily adhered to in community justice. For example, *wananchi* do not comprehend why a person who has been caught red-handed committing a crime should be "presumed innocent until proven guilty." It is also unlikely that under community ordering, a guilty person would get off the hook through a legal technicality as often happens under state law.

Due process has been described as "the fountain from which all procedural rules and doctrines flourish."[121] In a study on community justice conducted by Nina and Schkwikkard in South Africa, it was

119. Balakrishnan Rajagopal, (2006) "Counter-Hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy," *Third World Quarterly* 27(5) (2006): 767-783, at p. 781.

120. See Meyerstein, "Between Law and Culture," Note 97, at p. 492.

121. Simona Grossi, "Procedural Due Process," *Seton Hall Circuit Review* 13 (2) (2017): 155-202 at p. 156.

revealed that in many organs of popular justice one or more of the due process principles were abrogated. But they did not think that it necessarily led to injustice, after all, "it must be remembered that the demand for due process is based on the recognition that the individual needs to be protected from undue interference by the powerful institutions of the impersonal state. The self-regulatory nature of popular justice precludes undue state interference, and it is in this context that the ideals of due process are subjugated to the needs of the community."[122] The researchers further noted that in state-sanctioned mediation and alternative dispute resolution (ADR), due process clauses are also routinely abrogated. Out-of-court settlements can also leave a sour taste in the mouths of the disputants. So why the outcry when it comes to community justice? In communitarian societies, like many of those found in Africa, community needs outweigh the "individual rights" embedded in procedural due process.[123] Rather than being accorded to the individual perpetrators of crime or civil wrongs, the ideals of fairness, reasonableness and efficiency carried in due process are bestowed on the families, the clans and the larger community.

But there are indeed instances when due process is totally revoked for the wronged party, particularly in relation to criminal offences. Take the example of incest, which is much more rampant than formal processes are willing to accept. Here, traditional justice tends to invoke supernatural explanations and sanctions for both the perpetrator and the victim. Among the Mende and Temne of Sierra Leone, for example, incest is considered defilement to be cleansed through supernatural processes.[124] For popular justice to thrive, the decolonization agenda must radically alter the socioeconomic and politico-cultural framework within which it operates. Popular justice has long captured the imagination of progressives as the only viable alternative to colonial forms of

122. Daniel Nina and Pamela Jane Schwikkard "The 'Soft Vegeance' of the People" Note 5 at p. 74. Also see S.K.B Asante, "Nation Building and Human Rights in Emergent African Nations," *Cornell International Law Journal* 2(1) (1969): 72-107.

123. E.g., the Constitution of Kenya sanctions alternative dispute resolution (ADR), including traditional dispute resolution (TDR) mechanisms. See Article 159(2)(c) of the Constitution of Kenya, 2010.

124. Minneh Kane, J. Oloka-Onyango and Abdul Tejan-Cole, "Reassessing Customary Law Systems as a Vehicle for Providing Equitable Access to Justice for the Poor," Note 81 at p. 15.

dispensing justice.[125] Informal processes of dispute resolution on the continent extend to benevolent groupings, family and clan heads, neighbours and community-based organizations. Africa must be wary of any form of capitalist appropriation of culture as its core interests lie, not in the local communities but in the political economies outside the continent.

"Hybrid" Gender Justice

In decolonizing African legal systems and in a bid to emancipate the continent's oppressed populations, it is vital to abolish colonial "customary law" and, instead, develop living customary law. At the same time, Afrocentric community justice mechanisms should be sanctioned as legitimate and accountable means of delivering justice. In this era of rapid changes, we must tap into its intrinsic processes of development and adaptation to engender justice. The pressure is on for radical legal changes.[126] In this endeavour, South Africa has begun to lead the way through its judicial convergence of living customary law and constitutionalism. This hybrid of living customary law and constitutionalism has resulted in unprecedented emancipatory outcomes for women in that country.[127]

The Constitutional Court of South Africa leads the continent in recognizing the distinction between the systems of colonial "customary law" and living customary law.[128] Recognition of the

125. See e.g., Sam Gyandoh, "Popular Justice and the Development of Constitutional Orders in Sub-Saharan Africa," *Third World Legal Studies*, 7(1) (1988): 139–60; Albie Sachs and Gita H. Welch, *Liberating the Law: Creating Popular Justice in Mozambique*, Note 84; and Boaventura de Souza Santos, "From Customary Law to Popular Justice," Note 9.

126. Gordon R. Woodman, "Legal Pluralism and the Search for Justice," Note 19.

127. See Andrew Hutchison & Nkanyiso Sibanda "A living Customary Law of Commercial Contracting in South Africa: Some Law-Related Hypotheses," *South African Journal on Human Rights*, 33(3) (2017): 380-405.

128. See for example, *Bhe & Others v. Magistrate, Khayelitsha & Others*, 2005 (1) SA 580 (CC). In this case the Court said, "The official rules of customary law are sometimes contrasted with what is referred to as 'living customary law,' which is an acknowledgment of the rules that are adapted to fit in with changed circumstances." Also see Chuma Himonga and Fatimata Diallo, "Decolonisation and Teaching Law in Africa with Special Reference to Living Customary Law," *PER/PELJ* 20 (2017) – DOI, http://dx.doi.org/10.17159//1727-3781/2017/v20i0a3267. Himonga and Diallo, while hailing the decision in the *Bhe* case, nevertheless critiqued court for underpinning its reasoning in the positivist/centralist theoretical framework. The court noted that

dynamism integral to living customary law can be wielded by the judiciary to facilitate its development and to bolster gender justice. This is precisely what the South African Constitutional Court did when interpreting the customary practice of male primogeniture in intestate succession in the case of *Bhe v. Magistrate, Khayelitsha*:

> The import of this was that since customary law is inherently flexible with the ability to permit compromise settlements, courts should introduce into the system those constitutional principles that the official system of succession violates. It was suggested that this could be done by using the exceptions in the implementation of the primogeniture rule which do occur in the actual administration of intestate succession as the applicable rule for customary law succession in order to avoid unfair discrimination and the violation of the dignity of the individuals affected by it. Those exceptions would, according to this view, constitute the 'living' customary law which should be implemented instead of official customary law.[129]

Thus, in ascertaining living customary law, courts must carefully consider the *context* and *meaning* of cultural practices and mores. In other words, courts must be alive to the theory of legal pluralism. Calls for the difficulty in proving living customary law simply point to a total disregard and lack of appreciation of pluralistic systems that do not necessarily share evidentiary rules. It may have made sense, for example, for a father of a bridegroom to negotiate *lobola* on behalf of his son one hundred years ago because the father was the one to provide the gifts as the groom-to-be was usually too young with meagre resources. However, today when men enter marriage at a relatively older age, many can afford the gifts themselves and therefore can enter into negotiations with the bride's family, including her mother, if the bride was raised by a single mother. The rule of precedent would not apply in this "living customary" case. As Justice Du Plessis stated in the case of *Mabena v. Letsoalo*:

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ascertaining living customary law was a "problem," thus reflecting their bias which resulted from their Common-Law training. The theoretical perspective of Legal Pluralism (which does not rely on legal rules and precedents) totally eluded them.

129. Judgment by DCJ Langa in *Bhe & Others v. Magistrate, Khayelitsha & Others*, 2005 (1) SA 580 (CC) at p. 65. Also see *Mthembu v. Letsela and Another* 2000 (3) All SA 219 (A).

> At present many unmarried men live on their own and fend for themselves. There is no reason to hold that an independent, adult man is not entitled to negotiate for the payment of lobolo in respect of his chosen bride, nor is there any reason to hold that such a man needs the consent of his parents to marry.... It is in addition borne out by the evidence of Mr Madisa that a man could negotiate for lobolo if he 'has his own house.' It is accordingly held that the fact that the appellant [groom's father] did not consent to the marriage under discussion has no effect on the validity of the marriage. By the same token his lack of involvement in the lobolo negotiations is of no consequence.[130]

The court rejected the argument by the groom's father that traditionally, only men could negotiate lobola as women were themselves under the guardianship of their fathers or husbands. Justice Du Plessis examined the context and concluded, "The evidence in this case is that the respondent's father had abandoned the family. The evidence further is that the respondent's mother as a matter of fact functioned as head of the family.... Customary law does recognise that a woman may act as head of a family in certain circumstances."[131] The judge concluded his judgment with a clear statement, leaving no doubt about the vitality of customary law:

> From what has been said regarding the bridegroom's entitlement to negotiate for and pay lobolo, it is evident that customary law is, as any system of law should be, in a state of continuous development. It has been able to develop the rule that a bridegroom can negotiate for and pay lobolo and thus has met the actual demands of society. Moreover, customary law exists not only in the 'official version' as documented by writers; there also is the 'living law', denoting 'law actually observed by African communities'.[132]

Doubtlessly, the court implicitly sourced its wisdom in the values of *Ubuntu* which emphasize good human relations and fosters meaningful human life.

But the explicit convergence of living customary law and *Ubuntu*

130. (1988) (2) SA 1069 at p. 1078.

131. Ibid. at p. 1079.

132. Ibid. at p. 1081.

was clearly seen in the case of *S v. Makwanyane*[133] where the Constitutional Court of South Africa was compelled to examine the issue of capital punishment from all possible legal angles in order to determine whether or not to abolish it. At the end of the day, the court reasoned in favour of the African philosophy of *Ubuntu*. It firmly expressed the need to "take account of the traditions, beliefs and values of all sectors of South African society" when developing jurisprudence. Justice Albie Sachs reiterated that securing a progressive legal system demands "giving long overdue recognition to African law and legal thinking as a source of legal ideas, values and practice."[134] In abolishing the death sentence the court extensively made reference to the values of *Ubuntu* as exemplified by Justice Yvonne Mokgoro who emphasized the need to revive and redefine the value of human dignity in South Africa. She said: "...even the vilest criminal remains a human being. In my view, life and dignity are like two sides of the same coin. The concept of *Ubuntu* embodies them both."[135]

In most African countries where customary law used to strictly apply the rule of male primogeniture in the olden days, today the practice has evolved such that daughters get a share of their deceased father's property. Circumstances have changed and, as in the *Bhe* case discussed above, customary law rose to address the changed circumstances in a progressive manner.[136] Similarly, in the case of *Gumede v. President of the Republic of South Africa and Others*, a male divorcee relied on a codified (read fossilized) customary law in KwaZulu Natal which entrenched male ownership and control of matrimonial property upon divorce to deny his former spouse a fair share of the property.[137] This is a very common condition that women all over the continent routinely face. The Constitutional

133. [1995] ZACC 3.

134. Ibid. at para 364.

135. Ibid. at para 311.

136. Also see the judgements in the cases of *Shibi v. Sithole*; *South African Human Rights Commission v. President of the Republic of South Africa* [2005] 1 SA 580 (CC).

137. Section 20 of the KwaZulu Act and Section 20 of the Natal Code provided that a family head is the owner and has control of all family property in the family home. Section 22 of the Natal Code further placed all "inmates" of a Kraal in respect of all family matters "under the control" of the family head to whom they all "owe obedience." See *Gumede v. President of the Republic of South Africa & Others* 2009 (3) SA 152 (CC) Para 26.

Court was quick to denounce the fossilized state "customary law" and argued for living customary law that is practised on the ground. Justice Moseneke said:

> [D]uring colonial times, the great difficulty resided in the fact that customary law was entirely prevented from evolving and adapting as the changing circumstances of the communities required. It was recorded and enforced by those who neither practiced it nor were bound by it. Those who were bound by customary law had no power to adapt it. Even when notions of spousal equality and equity and the abolition of the marital power of husbands over wives were introduced in this country to reform the common law, 'official' customary law was left unreformed and stone-walled by static rules and judicial precedent, which had little or nothing to do with the lived experience of spouses and children within customary marriages.[138]

Beyond South Africa, many other countries around the continent have taken the cue and are recognizing customary law as a living, active and dynamic body within the African legal system. Indeed, a close analysis of the developing jurisprudence since the early 1990s suggests, rather unexpectedly, that customary law is the primary game-changer for shifting and transforming the socio-legal status of women, and gender relations generally, through strategic litigation and judicial activism. Most importantly, courts are not outrightly rejecting customs using the repugnancy axe. Rather, they are engaging in very complex and nuanced arguments about the living nature of customary law. In other words, courts are not merely using the shorthand of "unconstitutionality" to strike down customary practices, but are interpreting them through the prism of living customary law. For example, in the 2013 Botswana case of *Ramantele v. Mmusi and others* involving women's inheritance, Justice Lestedi said:

> Constitutional values of equality before the law, and the increased levelling of the power structures with more and more women heading households and participating with men as equals in the public sphere and increasingly in the private sphere, demonstrate that there is no

138. Per Moseneke, DCJ in the case of *Gumede*, Ibid. Para 20.

> rational and justifiable basis for sticking to the narrow norms of days gone by when such norms go against current value systems… Customary law… develops and modernizes with the times, harsh and inhumane aspects of custom being discarded as time goes on; more liberal and flexible aspects consistent with the society's changing ethos being retained.[139]

The processes of decolonization and decoloniality for Africa require the continent to develop a robust jurisprudence based on a hybrid of traditional rules and "modern" developments in line with the approach adopted in South Africa's courts. However, the ultimate goal should be to dismantle all colonial legal and institutional frameworks that reinforce hierarchies. Consequently, there is need to formalize Indigenous systems of justice which are culturally relevant and that resonate with the decolonization/decolonial project. The resilience of these Indigenous systems tells a story of resistance and transcendence.

But where exactly does religious identity lie in Africa's modern pluralistic, multicultural societies? To what extent are African traditional religions (ATR) accommodated or resisted within post-colonial contexts? How do the continent's citizens navigate the tensions between their religious identities and their secular socioeconomic desires in the twenty-first century? It is to these hard questions that we turn next.

Gender and Religious Relativism

Legal pluralism in Africa also involves the recognition of received religions as an adjudicative authority. Most constitutions on the continent recognize the right to freedom of religion and its authority over aspects of a personal and family nature, albeit subject to state laws. To compound matters, British colonialists classified Islamic law as customary law in countries such as Nigeria and Tanzania, subjecting it to the repugnancy test. This was done out of expediency with the aim of retarding the growth of Islam.[140] It

139. *Ramantele v. Mmusi & Others* CACGB-104-12, Paras 77 and 80.

140. A. A. Oba, "Islamic Law as Customary Law: The Changing Perspective in Nigeria," *International and Comparative Law Quarterly* 51(4) (2002): 817-850. Also see Ayodele

was extremely problematic given the differences and contradictions between the two sources of law. But in many parts of West Africa, Shari'a or Islamic law is the official legal system. For example, in Chad, Mali, Senegal, Côte d'Ivoire and Burkina Faso, Shari'a operates side by side with received civil and customary law.

The two most popular religions in the world are Christianity, with an estimated following of 31 percent and Islam, whose adherents make up approximately 24 percent of the world population.[141] But there are several countries globally where these two religions are hardly practised, particularly in Asia. For example, over 81 percent of people in Nepal and 80 percent in India practise Hinduism. China and Hong Kong mostly practise Confucianism and Taoism. Moreover, approximately 1.2 billion people around the world are non-religious.[142] This means that over 3.5 billion people (or 44%) do not subscribe to any of the dominant religions. This fact is important to keep in mind as many Africans, with their colonial mentality, act as if the beliefs and values of Christianity and/or Islam are universal. As a system of domination, religious supremacy is closely linked to other supremacist ideologies such as those undergirding racism, heterosexism and classism.

Islam was introduced to the African continent as early as the seventh century while Christianity was popularized much later, in the eighteenth.[143] "The religion and culture of Islam penetrated along the trade routes, becoming gradually incorporated into the African ways of life."[144] Unlike ATR, Christianity and Islam are universalist, in that they compete in seeking to expand their

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Atsenuwa, "In Search of Transformative Justice: The Proselytism of Legal Feminism," Professorial Inaugural Lecture, University of Lagos (July 23, 2014).

141. Conrad Hackett and David McClendon, "Christians Remain World's Largest Religious Group, but they are Declining in Europe," April 5, 2017, Pew Research Center, available at: https://www.pewresearch.org/fact-tank/2017/04/05/christians-remain-worlds-largest-religious-group-but-they-are-declining-in-europe/ft_17-04-05_projectionsupdate_globalpop640px/ [accessed Nov. 9, 2019].

142. World Population Review - 2019, available at: http://worldpopulationreview.com/countries/religion-by-country/ [accessed November 9, 2019]

143. Christianity was present in Africa way before that; first, in the first five centuries AD, and later in the C15th and C16th through Catholic Portuguese traders, but the conversions were never of any significance at that time. See Elizabeth Isichei, *A History of Christianity in Africa from Antiquity to the Present* (London: SPCK, 1995) at p. 31.

144. Ivan Hrbek, "Africa in the Context of World History," in Mohammed El Fasi and Ivan Hrbeck (eds.), *General History of Africa, Vol III – Africa from the Twelfth to the Sixteenth Century*, pp. 172-186 (Berkeley, CA: University of California Press, 1988) at p. 9.

influence to the entire world through proselytization; conversion of "unbelievers" into their fold is considered a solemn duty.[145] ATRs are not missionary religions and make no efforts to convert non-believers. In Africa, the majority adhere to the messianic Abrahamic religions of Christianity (45%) and Islam (40%).[146] But what remains hidden from the official databases on African religious affiliation is the fact that millions of people practise the received religions simultaneously with their traditional ones. It is not unusual to find individuals wearing a rosary or *misbaha* and at the same time in possession of a traditional amulet to protect them from evil spirits. Covert visits to the shrines of traditional spiritual practitioners by practising Christians and Muslims are as frequent (if not more so) as those to churches and mosques. Such syncretic worship is evidence that ATRs are still alive and well and far exceed the global estimate of 6 percent.[147] This is not surprising at all given that ATRs are not disconnected from the people's culture. John Mbiti tells us that ATR is "lived (not read), it is experienced (not meditated), it is integrated into the life of the people: Wherever they are, their religiosity, their religion, is with them."[148] As part of culture, and like culture, ATR is a living, evolving construct. Hence, it is part of the hybrid of traditional rules that was discussed in the preceding sections of this chapter.

The 1885 General Act of the Berlin Conference which articulated the formal agreements reached by the colonizing European nations was sealed "In the Name of God Almighty."[149] To be sure, religion played at least three pivotal and overtly political roles in the process of colonizing Africa. First, by converting the people from their Indigenous religious/spiritual beliefs and forcing them to take on

145. Makau Mutua, "Limitations on Religious Rights: Problematizing Religious Freedom in the African Context," *Buffalo Human Rights Law Review* 5 (1999): 75-106.

146. Encyclopaedia Britannica, *Britannica Book of the Year 2003* at p. 306.

147. See Tagbo Ugwu, "Religious Pluralism and Sustainable Environment," *Mediterranean Journal of Social Sciences*, 4(16) (2013): 55-62. Also see Robert Cameron Mitchell, *African Primal Religions* (Niles, IL: Argus Communications, 1977).

148. John Mbiti, "General manifestations of African religiosity," paper presented at the First Meeting of the Standing Committee on the Contributions of Africa to the Religious Heritage of the World, http://www.afrikaworld.net/afrel/mbiti.htm [accessed November 9, 2019].

149. See the full text of the *General Act of the Berlin Conference on West Africa*, available at: https://www.thoughtco.com/general-act-of-the-berlin-conference-4070667 [accessed November 9, 2019].

alien religions, the empire disconnected African people from their crucial identity markers and value orientations. As Makau Mutua observed: "In societies, such as the African ones where religion is woven into virtually every aspect of life, its delegitimization can easily lead to the collapse of social norms and cultural identities. The result, as has been the case in most of Black Africa, is a culturally disconnected people, neither African nor European nor Arab."[150]

This phenomenon is put into bold relief when you contrast the legacies of colonization on African people with those on the Indian subcontinent where British Christianization was successfully resisted. Indeed, India's strong resistance to proselytization, in part, fuelled the 1857 independence rebellion. What sparked off the war was the British policy to lubricate their rifle cartridges with fat from cows and pigs—a move that riled and offended the sacred beliefs of the Hindu and Muslims, respectively.[151]

Apart from being used to de-culturalize, religion was also instrumentalized in the service of the colonial project to "divide and rule" Indigenous populations and to entrench power. In particular, the colonialists manipulated the differences in religious faiths, denominations and sects. By working one politico-religious group off against the other, the divide-and-rule policy ensured that Indigenous people did not unite against their common enemy—the colonizer.[152] Writing about the Nigerian experience, Ekpe Ayokhai *et al.* argue:

> While the emirate was established as part of an empire-building effort and anchored on a religious ideology that promoted the emergence of a cosmopolitan political culture; colonial rule, on the other hand, through its policy of divide and rule, emphasized differences between and among the societies under the Muri Emirate and the larger Nigeria

150. Makau Mutua, "Limitations on Religious Rights," Note 145, at p. 75.

151. See Vinayak D. Savarkar, *The Indian War of Independence* (Bombay: Phoenix Publications, 1947); Pooja Gupta and Shalini Vohra, "Socio-Political Milieu of the Devil's Wind: The Revolt of 1857," *International Journal of Multifaceted and Multilingual Studies* 3(8) (2016): 1-17. Among the Hindu, cows are considered a sacred symbol of life, while the pig is considered unclean among the Muslims.

152. See e.g., Michael Twaddle, *Kakungulu and the Creation of Uganda: 1868-1928* (Athens, OH: Ohio University Press, 1993). In India, the "fat policy" worked to unite the Hindu and Muslim populations to fight against a common enemy.

> area on the basis of language, ethnicity and religion…. The objective of colonial rule could only have been attained in dichotomized and antagonistic societies. They did what they could to bring about this division in societies that had hitherto made significant progress in terms of social and political ideology.[153]

The third, and most important function of religion, was that it facilitated and justified the colonization project.[154] Both Islam and Christianity were pandered as religions "of civilization" and "modernity." Religion was used as a mobilizing force to purchase submission and overawe resistance.[155] Only converts and adherents had direct access to services such as education and healthcare, which were monopolized by the colonial machinery.[156] Indeed, Christian mission schools and hospitals as well as Muslim mosques, *madrasas* and hospitals became centres of civilization and modernization.[157] Hence, the lure of literacy, modern medicine and "enlightenment" that religious education promised converted many. As part of the "civilizing" and acculturalization package, therefore, religious ideology quite literally followed the gun, converting "savages," one soul at a time.[158] Mutua writes: "Islam was introduced to Africa through military conquest by the Arabs. Thereafter, the processes of Arabization (in North Africa and the Nile Delta) and Islamization (in East and West Africa) proceeded simultaneously through force, the slave trade, and general commerce. The entry of Christianity into the continent was no less violent, coming as it did in partnership with the colonial imperial

153. Fred Ekpe Ayokhai, M. H. Suleiman and Talla Ngarka, "Rethinking Social Change in Nigeria: Historicizing Emirate and Colonial Rules in the Muri Area of North-Eastern Nigeria, 1817-1960," *Journal of Historical Society of Nigeria* 22 (2013): 158-177 at p. 176.

154. J. P. Daughton, *An Empire Divided: Religion, Republicanism, and the Making of French Colonialism, 1880-1914* (Oxford: Oxford University Press, 2006). Colonialists pointed to words in "holy" texts, like Mark 16: 15-71 in the Bible to rationalize colonialism.

155. Peter Berger, *The Sacred Canopy: Elements of a Sociological Theory of Religion* (New York: Anchor Books, 1990).

156. E.g., see Forbes Munro, *Colonial Rule Among the Kamba: Social Change in the Kenya Highlands, 1889-1939*, (Oxford: Clarendon Press, 1975); and Oladiti Akeem and Kamaldeen Sulaiman, "Islamic Education in Ibadan, Oyo State, Nigeria (1893-1960), *Tārīkhwa Tamaddun-iIslamī*, 21 (2015): 29-47.

157. Mary Nyangweso Wangila, "Religion, the African Concept of the Individual, and Human Rights Discourse: An Analysis," *Journal of Human Rights* 9(3) (2010): 326-343.

158. See Adam Hoschschild, *King Leopold's Ghost: A Story of Greed, Terror and Heroism in Colonial Africa* (Boston: Mariner Books, 1998).

powers."[159] The "civilizing" proselytizers associated "savagery" with ATR. They pejoratively used terms such as "fetishism" "animism" "paganism" "infidel" and "witchcraft" to describe ATR. Unlike the messianic religions, the pantheon of ATR included a God (genderless) and several deities (both female and male). They worshipped ancestors and spirits that they believed to inhabit nature (e.g., water bodies, rocks, flora and fauna) and who had to be propitiated with sacrifices. Magical healers were venerated and believed to protect the population from evil spirits.[160] The colonizers condemned all this and ATR was labeled demonic and immoral, even criminalizing most of its divinities and practices.[161]

Modern empire-building in the eighteenth and nineteenth centuries was by no means unique in using the lure of religion to expand its territories. Ancient empires such as the Nubian kingdom of Kush (c. 1069 BCE to 350 CE) also mobilized religion and the use of force to expand into Egypt.[162] Even back then, the ideology of religion and that of the state were inseparable. Indeed, historically, religion—be it Christianity, Islam, Judaism, Confucianism, Buddhism, etc.,—has always been deployed towards state formation and nation-building.[163] As a sacralizing force, it also played pivotal roles in nation-building of the ancient African kingdoms such as Buganda in East Africa, Ashanti in West Africa and KwaZulu in southern Africa. In Buganda, for example, national solidarity was partly built around a single religion to unite multiple ethnic and clan groupings into one nation. As Elliot Green explains: "a singular Bugandan [sic] religion was common to all Baganda, with a variety of deities called *lubaale* to whom temples and priests were devoted. While *lubaale* were considered former clan members, they could be and were worshipped by all Baganda, since 'it was

159. Makau Mutua, "Limitations on Religious Rights," Note 145 at p. 86.

160. See generally, DjiBril T. Niane (ed.), *General History of Africa, Vol. IV—Africa from the Twelfth to the Sixteenth Century* (Berkeley, CA: University of California Press, 1984); and Bethwell Ogot (ed.) *General History of Africa, Vol. V—Africa from the Sixteenth to the Eighteenth Century* (Berkeley, CA: University of California Press, 1992).

161. See e.g., Kathyrn Rountree (ed.), *Cosmopolitanism, Nationalism, and Modern Paganism*, (New York: Palgrave Macmillan, 2017).

162. William Adams, "Sacred and Secular Politics, in Ancient Nubia," *World Archeology* 6(1) (1974): 39-51.

163. Willfred Spohn, "Multiple Modernity, Nationalism and Religion: A Global Perspective," *Current Sociology* 51(3/4) (2003): 256-286.

the question of locality, not of kinship, that decided to which of the prophets an inquirer should go.'"[164] When British colonialists arrived in Buganda during the nineteenth century, they essentially "demoted" the kingdom "from being a nation to an ethnic group… thus flattening what were large and obvious differences between these groups in the precolonial period."[165]

The imported Abrahamic religions worked hard to entrench patriarchal domination, propagate ideologies of gender inequality and rearrange African societies in a bid to suit the colonial economies. Wherever it was practised, their evangelism championed the ideology of domesticity, whether this was done in places of worship, schools, or health centres. Under this ideology, women were oriented towards the family environment where they would perform their "natural" duties of nurturing and caring in "private." By contrast, men were positioned to occupy the so-called "public" sphere—sites where commerce and politics happened. There is a rich body of feminist literature based on archival material found in repositories based in London, Berlin, Paris and other colonial metropolitan cities which clearly reveal such gender-biased colonial policies and link them to Christianization.[166] Obviously, the extent to which such ideologies affected African women and men depended on the context, social status and religiosity of specific individuals. While colonial policies and structures generally achieved their goals, many Africans challenged and even subverted such ideologies. Melinda Adams reviews some of the literature that demonstrates how some African women exercised agency by

164. Elliott Green, "Ethnicity and Nationhood in Precolonial Africa: The Case of Buganda," *Nationalism and Ethnic Politics* 16(1) (2010): 1-21 at p. 6. Partial quotation from Lucy P. Mair, *An African People in the Twentieth Century* (London: Routledge, 1934) at p. 21.

165. Ibid. at p. 17.

166. See e.g., Deborah Gaitskell, "Christian Compounds for African Women in Johannesburg, 1907-1970," *Journal of Southern African Studies* 6(1) (1979): 44-69; Nancy R. Hunt, "Domesticity and Colonialism in Belgium Africa: Usumbura's Foyer Social, 1946-1960," *Signs: Journal of Women in Culture and Society* 15(3) (1990): 447-474; Nakanyike Musisi, "Colonial and Missionary Education: Women and Domesticity in Uganda, 1900-1945," in Karen T. Hansen, *African Encounters with Domesticity* pp. 172-194 (New Brunswick, NJ: Rutgers University Press, 1992); Max Montgomery, "Colonial Legacy of Gender Inequality: Christian Missionaries in German East Africa," *Politics and Society* 45(2) (2017): 225-268; and Special Issue on "Indigenous Women and Colonial Cultures," *Journal of Colonialism and Colonial History,* 6(3) (2005).

reinterpreting and reshaping colonial messages to their own ends and agendas.[167]

Today, both Christianity and Islam are so forceful in their competing universalizing reach that there has been a dramatic expansion of the two religions in Africa.[168] As Christianity recedes in Western Europe, its accession in Africa is so rapid that the continent has become the "Christian heartland" of the world.[169] In particular, Africa has witnessed a blossoming of Pentecostal-Charismatic churches since the late 1980s.[170] An important feature of how the two Abrahamic religions have developed on the continent is that they have taken on an "African flavour" as a result of their interaction with the life and lore of its people.[171] For example, as Kenyan theologian scholar Philomena Mwaura notes, the neo-Pentecostal churches have "reclaimed the pneumatic and charismatic experience that was suppressed by mainline Christianity and which resonated well with African spirituality."[172] This appropriation of the transplanted religions—particularly Christianity—is so significant that "Africa may be the theatre in which some determinative new directions in Christian thought and activity are being taken."[173] Furthermore, the expansion of the two religions on the continent has been accompanied by a revivalism with a clear trend in the direction of increased fundamentalism.[174]

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167. Melinda Adams, "Colonial Policies and Women's Participation in Public Life: The Case of British Southern Cameroons," *African Studies Quarterly* 8(3) (2006): 1-22.

168. Lamin Sanneh, "The Domestication of Islam and Christianity in African Societies: A Methodological Exploration," *Journal of Religion in Africa* 11(1) (1980): 1-12.

169. Andrew Walls, "African Christianity in the History of Religions, *Studies in World Christianity* 2(2) (1996): 183-203, at p. 185.

170. See Simon Coleman (ed.), "The Faith Movement: A Global Religious Culture," Special Issue of *Culture and Religion* 3(2) (2002); and Birgit Meyer, "Christianity in Africa: From African Independent to Pentecostal-Charismatic Churches," *Annual Review of Anthropology* 33 (2004): 447-474.

171. Ibid. Also see René Bravmann, *African Islam* (Washington DC: Smithsonian Institution Press, 1983).

172. Philomena Mwaura, "Gender and Power in African Christianity: African Instituted Churches and Pentecostal Churches," in Ogbu Kalu (ed.), *African Christianity: An African Story*, pp. 410-445 (Trenton, NJ: Africa World Press, 2007) at p. 417.

173. Andrew Walls, "African Christianity in the History of Religions," Note 169 at p. 186. This would explain, for instance, the phenomenon of some Anglican parishes breaking off from their home churches in the West and joining parishes in Africa.

174. Ali Mazrui, "African Islam and Competitive Religion: Between Revivalism and Expansion," *Third World Quarterly* 10(2) (1988): 499-518.

Caught in the middle of the processes of the rediscovered religious fundamentalisms are the socially marginalized, particularly women and sexual minorities. The principal activists (i.e., the modern African proselytizers) of the reshaped and reinterpreted versions of the two religions are men, with notable influence from conservative forces in the USA and some Arab countries. They are virulent and oppressive in the bid to "tame" and control. In an email communication, American Pastor Scott Lively—one of the most outspoken religious fundamentalists in the USA—implored his Ugandan anti-gay religious and political collaborators to remove me from the position of Dean of Law at Makerere University, arguing that:

> She should not be allowed to remain in this post. As the Scripture warns, Bad company corrupts good morals, and the people she is training in her views will be Uganda's future leaders. This is one of the ways that the "gays" transformed America – by corrupting the leaders. If you don't stop her now, while you have the power of public opinion at its height, you will never be able to do it. I suggest a behind-the-scenes campaign to have her fired or "promoted" into a less influential position.[175]

The email clearly demonstrates the real push-back against any possibility of overcoming the coloniality of gender in Africa. Its political dimensions are unmistakable as top Ugandan government politicians were among the recipients of the message—all men. Notably, the anti-gay minister of Ethics and Integrity, Nsaba Buturo, as well as the sponsor of the private members' Anti-Homosexuality Bill, MP David Bahati, were among the recipients. Egyptian feminist Nawal El Saadawi notes: "Men cling to religion more than women, they feel superior to their females, they are up in arms to 'protect their women' against the invasion of postmodern cultures, or Western civilization built on material values and therefore corrupt. Religion is a defence against these threats; but religion is a double-edged sword because all along it has been

175. Email dated July 13, 2010 from Scott Lively to Nsaba Buturo, MP David Bahati, Pastor Martin Sempa, Stephen Langa and others. Also see case of *Sexual Minorities Uganda (SMUG) v. Scott Lively*, 254 F. Supp. 3d 262 (D. Mass. 2017).

interpreted and continues to be interpreted differently by male rulers."[176]

One idea that most African feminists and religious relativists share is their common opposition to Western universalizing ideologies. But the two groups part ways when the latter seek to hide under the anti-universalistic umbrella to secure and enhance the control of women. Under the guise of "preserving family values," religious fundamentalists not only idealize women, they also "naturalize" sexuality and the institution of the family in ways that turn the bodies of women and sexual minorities into a battlefield in their struggles to appropriate institutional power.[177] Employing religious-relativist arguments, they dispute the application of human rights. This amounts to an abuse of "legal pluralism" which stands for the co-existence of multiple regulatory orders; it exposes the political nature of the imported religions, which are manipulated for "absolutism." They construct moral codes based on hegemonic systems of power and control that work to reinforce hetero-patriarchy and capitalism.

African feminist scholars have responded to religious fundamentalism by challenging female subordination in the name of the Bible and the Qur'an. In particular, they expose the sexist interpretations of the sacred scripts and holy books by fundamentalists. African feminist hermeneutics use the African context to analyze the Bible from a critical and scientific point of view, reinterpreting it to expose the androcentric slants and highlighting the positive roles of women in the Bible.[178] Justin

176. Nawal El Saadawi, "Women, Religion, and Postmodernism," Note 55 at p. 35.

177. See Sylvia Tamale (ed.), *African Sexualities: A Reader* (Oxford: Pambazuka Press, 2011). Also see Judy Brink and Joan Mencher (eds.), *Mixed Blessings: Gender and Religious Fundamentalism Cross Culturally* (New York: Routledge, 1997). Chapters 6 and 7 of this book discuss these issues in more detail.

178. See e.g., Sarojini Nadar, *Power, Ideology and Interpretation/s: Womanist and Literary Perspectives on the Book of Esther as Resources for Gender-Social Transformation* (Pietermaritzburg: University of Natal, 2003); Musa Dube (ed.) *Other ways of reading: African women and the Bible* (Atlanta: Society of Biblical Literature, 2001); Musa Dube, *Post-colonial feminist interpretation of the Bible* (St. Louis: Chalice Press, 2000); Dora Rudo Mbuwayesango,"Childlessness and women-to-women relationships in Genesis and in African patriarchal society: Sarah and Hagar from a Zimbabwean woman's perspective (Gen 16:116; 21:821)," *Semeia* 78 (1997): 27-36; Teresa Okure, "Feminist interpretation in Africa," in Elisabeth Schüssler Fiorenza (ed.), *Searching the Scriptures: A feminist introduction*, pp. 76-85 (New York: Crossroads, 1993).

Ukpong summarizes this orientation with examples from the literature:

> Teresa Okure has shown that the creation of Eve from Adam's rib, far from denoting a situation of inferiority as is often understood, denotes their identity in nature, their destined marital status and their equality. Similarly, concerning some sexist Pauline texts, Mbuy-Beya has pointed out that Paul was dealing with specific situations of disorder that needed establishing 'a certain hierarchy for the sake of order.' He was therefore not giving a universal and timeless directive.[179]

Similarly, Muslim feminists have stood up against the manipulation of the sacred texts to fabricate false traditions in the name of Islam. For example, Moroccan sociologist Fatima Mernissi was a prolific Muslim feminist who devoted her professional life to reinterpreting various *Hadiths* and providing compelling evidence from the Qur'an of Islam's egalitarian dimensions on gender relations.[180] She argued that "Not only have the sacred texts always been manipulated, but manipulation of them is a structural characteristic of the practice of power in Muslim societies."[181] She analyzed and denounces some *Hadith* narrators who misinterpret sayings attributed to the Prophet Muhammad for their own misogynist agendas. For example, Mernissi criticized the oft-quoted *hadith* that says, "The Prophet said that the dog, the ass, and woman interrupt prayer if they pass in front of the believer,

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179. Justin S. Ukpong, "Developments in Biblical Interpretation in Modern Africa," *Missionalia* 27(3) (1999): 313-329 at p. 323. Also see Teresa Okure, "Biblical Perspectives on Women: Eve, the Mother of all the Living (Gen 3:20)," *Voices from the Third World* 8(3) (1985): 822-92; Bernadette Mbuy-Beya, "African Spirituality: A Cry for Life," in K. C. Abraham and B. Mbuy-Beya (eds.), *Spirituality of the Third World*, (Maryknoll: Orbis Books, 1994); Mercy Odudoye, "Violence against women: A challenge to Christian theology," *Journal of Enculturation Theology* 1(1) (1994): 47-60; Anne Nasimiyu-Wasike, 1991. "Christology and an African Woman's Experience," in Robert J. Schreiter (ed.), *Faces of Jesus in Africa*, pp. 73-80 (Maryknoll: Orbis, 1994); and Joyce Tzabedze, "Women in the church (1 Tim 2:8-15; Eph 5:22)," in John Pobee and Barbel von Wartenberg-Potter (eds.), *New Eyes for Reading: Biblical and Theological Reflections by Women from the Third World*, pp. 76-79 (Geneva: WCC, 1986).

180. A *Hadith* is a record of what Prophet Mohammed said or did and is accepted as a legitimate source of guidance under Islam in addition to the Qur'an. See e.g., Fatima Mernissi, *Women and Islam: An Historical and Theological Inquiry* (Oxford: Blackwell, South Asia Books, 1991); and Fatima Mernissi, "Virginity and Patriarchy," *Women's Studies International Forum* 5(2) (1982): 183-191.

181. Fatima Mernissi, *The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam*, trans. Mary Jo Lakeland (New York: Addison-Wesley, 1991) at pp. 8-9.

interposing themselves between him and the *qibla*" for its obvious sexism and misogyny.[182] In a 2003 anthology entitled *Progressive Muslims: On Justice, Gender and Pluralism*, Muslim feminists from across the world, including Africa, offer progressive reinterpretations of their faith, with a common understanding that:

> …every human life, female and male, Muslim and non-Muslim, rich or poor, 'Northern' or 'Southern' has exactly the same intrinsic worth. The essential value of human life is God-given, and is in no way connected to culture, geography, or privilege… A progressive Muslim agenda is concerned with the ramifications of the premise that all members of humanity have this same intrinsic worth because, as the Qur'an reminds us, each of us has the breath of God breathed into our being.[183]

While some Muslim scholars debunk the term "feminist," South African feminist scholar Sa'diyya Shaikh embraces it because she believes that there is value in the term which "enables Muslim women to situate their praxis in a global political landscape" thus creating "greater possibilities for alliances, exchanges, and mutually enriching interaction among different groups of women."[184]

Nawal El Saadawi ponders: "Could there be a link between international capital and religion, between the thriving global market and the mushrooming religious fundamentalist movement, be it Christian, Muslim, Jewish, Hindu, Buddhist, or anything else?"[185] Max Weber would provocatively respond in the affirmative. In his 1905 treatise *The Protestant Ethic and the Spirit of Capitalism*, Weber made the link between religious ideology and capitalist development.[186] Today, Pentecostal Christianity, with its emphasis

182. Ibid. at p. 64.

183. Omid Safi, "Introduction: The Times they are a-Changing – a Muslim Quest for Justice, Gender Equality and Pluralism," in Omid Safi (ed.), *Progressive Muslims: On Justice, Gender and Pluralism*, pp. 1-32 (Oxford: Oneworld Publications, 2003) at p. 3.

184. Sa'diyya Shaikh, "Transforming Feminism: Islam, Women and Gender Justice," in Omid Safi (ed.), *Progressive Muslims: On Justice, Gender and Pluralism*, pp. 147-162 (Oxford: Oneworld Publications, 2003) at p. 156.

185. Nawal El Saadawi, "Women, Religion, and Postmodernism," Note 55, at p. 35.

186. See Max Weber, *The Protestant Ethic and the Spirit of Capitalism* (London: George Allen and Unwin, 1976). Despite many critical analyses of Weber's work, his thesis has been resilient and remains persuasive today.

on the Prosperity Gospel, is the epitome of neoliberal capitalism on the continent. As Birgit Meyer put it: "They thrive especially in urban areas, and appeal to (aspiring) middle classes. Contrary to expectations generated in the framework of theories of modernization and development which expect a decline of the public role of religion, the spread of these churches occurs together with the turn to so-called democratization and a shift from African states trying to regulate national economies towards a deliberate embracement of global capital."[187] Not only have Pentecostal churches embraced the logic of the market, they are active participants with entrepreneur ("prosperity") pastors running mega for-profit churches.[188]

Islamic fundamentalism, on the other hand, shares anti-colonial sentiments with African feminists and adopts "a reactionary response to a predatory capitalism and an alienating globalization."[189] However, the purist vision of Islam that is sought by conservative ideologues is mobilized in antithesis to feminist ideologies. Deniz Kandiyoti argues that, as a backlash to the colonial encounter, women became the ultimate repositories of Islamic cultural identity and integrity.[190] She cites Algeria as an example: "'Islamic' modesty markers such as the veil became symbols of anti-imperialist resistance in the Algerian war."[191] Women's modesty is, therefore, offered as a symbol of the return to an imagined unspoiled Islamic traditional way of life.

Directly or indirectly, religious beliefs and values form part of Africa's pluralistic legal system and culture. Spiritual coloniality was key to establishing the imperial empire and, to date, continues to be a forceful influence in the lives of African people. Its

187. Birgit Meyer, "Pentecostalism and Neo-Liberal Capitalism: Faith, Prosperity and Vision in African Pentecostal-Charismatic Churches," *Journal for the Study of Religion* 20(2) (2007): 5-28, at p. 7.

188. Ibid. Also see Paul Gifford, 2004. *Ghana's New Christianity: Pentecostalism in a Globalising African Economy* (London: Hurst, 2004).

189. Hussein Solomon, *Terrorism and Counter-Terrorism in Africa: Fighting Insurgency from Al Shabaab, Ansar Dine and Boko Haram* (London, Palgrave Macmillan, 2015) at p. 17.

190. Deniz Kandiyoti, "Dossier 5-6: Women and Islam: What are the Missing Terms?" *Women Living Under Muslim Laws* (Dec 1988 – May 1989), available at: http://www.wluml.org/node/256 [accessed Nov 12, 2019]. Also see Abdel Wahab Boudhiba, *Sexuality in Islam* (London: Routledge and Kegan Paul, 1985).

191. Deniz Kandiyoti, Ibid. at p. 4.

instrumentalization for political and economic agendas is evident everywhere on the continent, with society's vulnerable groups such as women and sexual minorities, suffering its worst manifestations. Indeed, (new) organized religion is being nurtured as the most important frontier for the exploitation and domination of Africa's masses, in a manner that subverts their individual autonomy and their spiritual liberation. This requires a twofold engagement, the first of which must consist of an internal critique of the misogynist, patriarchal and exclusionary facets of these movements, while secondly, it must nurture and support those alternative spiritual movements that offer a reconceptionalized notion of the African self.

6

Repositioning the Dominant Discourses on Rights and Social Justice

I walk.
I walk through this journey alone
I tiptoe through the darkness, through the murk through the… dark
I stepity step…I sway, I bounce… I walk…
I walk. As they lurk… they linger… they stare… they plot…
I march…. I match the footsteps of my ancestors,
those that came before me
those that cleared the path, my fore-mothers whom they never speak of,
the torch bearers
those who fought the battle so I can be here…
so, I can walk… march… journey on…
—Nafula Wafula[1]

Like most legal concepts taken for granted today in Africa, "human rights"—as articulated in contemporary discourse—are alien to the continent. The interpretations and narratives of human rights that we discuss in African educational institutions, as well as in current

1. From her poem, "Of Broken Glass Ceilings," *African Feminism*, August 9, 2017, available at: https://africanfeminism.com/of-broken-glass-ceilings-by-nafula-wafula/ [accessed January 29, 2020].

civil society and political spaces, are largely steeped in Western ideas and history.[2] Indeed, those narratives were largely born as part of the universalization of the international order based on the principles of state sovereignty, equality and nonintervention that date back to the 1648 European Treaty of Westphalia. That is not to say that human rights discourse was absent from the continent prior to the adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations in 1948.[3] Numerous African scholars have devoted considerable effort in demonstrating that the notion of human rights was integral to the African social and political ethos well before colonialism arrived on the continent.[4] African feminist scholars have also critiqued the dominance of Western human rights perspectives that permeate international feminism.[5]

Needless to say, the entire foundation and structure of the formal legal system was directly imported from the colonial metropoles and imposed on the colonies. Just as African Indigenous philosophy of law would not have necessarily supported the realities in Europe, so too was such imposition problematic in Africa. To be sure, as social constructs, rights are dynamic, changing in their implications over time and context, but what "seed" did they

2. See Issa Shivji, *The Concept of Human Rights in Africa* (Dakar: Codesria, 1989).

3. See Bonny Ibhawoh, *Imperialism and Human Rights: Colonial Discourses of Rights and Liberties in African History* (Albany: State University of New York Press, 2007); and Makau Mutua, *Human Rights: A Political and Cultural Critique* (Philadelphia: University of Pennsylvania Press, 2002).

4. E.g., see J. Oloka-Onyango, *Battling Over Human Rights: Twenty Essays on Law, Politics and Governance* (Bamenda: Langaa Research & Publishing, 2015); Makau Mutua, "Human Rights in Africa: The Limited Promise of Liberalism," *African Studies Review* 51(1) (2008): 17-39; Issa Shivji, *The Concept of Human Rights in Africa*, Note 2; Abdullahi An-Na'im (ed.), *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (Philadelphia: University of Pennsylvania Press, 1992); Osita Eze, *Human Rights in Africa: Some Selected Problems* (Lagos: The Nigerian Institute of International Affairs, 1984); Morris Mbondenyi, *International Human Rights and their Enforcement in Africa* (Nairobi: LawAfrica Publishing, 2011); and T.W. Bennett, *Human Rights and African Customary Law under the South African Constitution* (Johannesburg: Juta & Co. Ltd, 1999).

5. E.g., see Awa Thiam, *Speak Out, Black Sisters: Feminism and Oppression in Black Africa*, Trans. Dorothy Blair (London: Pluto, 1986); J. Oloka-Onyango and Sylvia Tamale, "The Personal is Political, or Why Women's Rights are Indeed Human Rights: An African Perspective on International Feminism," *Human Rights Quarterly* 17 (4) (1995): 691-731; Fareda Banda, *Women, Law and Human Rights: An African Perspective* (Oxford: Hart Publishing, 2005); Obioma Nnaemeka and Joy Ezeilo (eds.), *Engendering Human Rights: Cultural and Socioeconomic Realities in Africa* (New York: Palgrave Macmillan, 2005); and Rudo Gaidzanwa, "African Feminism: Rethinking approaches and reconsidering strategies," *BUWA! – A Journal on African Women's Experiences* 1(1) (2010): 7-10.

germinate from and which ground nourished them? The legal rights regime is closely linked to resistance, which Christof Heyns describes as the "struggle approach" to human rights.[6] When we consider the structural violence that conditioned and shaped Africa's colonial experience, we can begin to understand its re-enactment in contemporary African dictatorships and autocracies. One only needs to revisit this history through exposés such as Adam Hochschild's *King Leopold's Ghost,* Silvester & Gewald's *Words Cannot be Found, German Colonial Rule in Namibia* and David Anderson's *Histories of the Hanged* to appreciate the extent of Europe's atrocious violence on the continent.[7] All state violence (historical and contemporary) against the people occurs within a legal framework, which is used to legitimize and legalize oppression.

The formal legal system relies on the state for law enforcement while traditional legal systems are people-centric.[8] As part of the formal legal system, the enforcement of human rights is executed by the capitalist-patriarchal state. How realistic is it then to expect such a regime to protect the rights of subordinated social groups such as women that are oppressed by capitalist-patriarchal power structures? What alternatives can African women turn to in their quest for decolonization and decolonial liberation? These are some of the issues that are analyzed in this chapter.

Many scholars from the global South have reflected on the universal application of human rights and its implication for the *substantive* protection of what they describe as vulnerable groups.[9]

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6. See Cristof Heyns (2001), "A 'Struggle Approach' to Human Rights," in Arend Soeteman (ed.) *Pluralism and Law*, pp. 171-190 (Dordrecht: Springer, 2001).

7. See Adam Hochschild, *King Leopold's Ghost* (Boston: Houghton Mifflin, 1998); Jeremy Silvester and Jan-Bart Gewald (eds.), *Words Cannot be Found, German Colonial Rule in Namibia: An Annotated Reprint of the 1918 Blue Book* (Leiden: Brille, 2003); and David Anderson, *Histories of the Hanged: Britain's Dirty War in Kenya and the End of the Empire* (London: Phoenix, 2006).

8. See S. M. Kang'ethe, "Exploring Efforts of Integrating Progressive Aspects of Cultures into Development and Purging Retrogressive Ones from Development Framework in a Score of African Countries," *Journal of Human Ecology* 48(2) (2014): 267-274.

9. Such African scholars include: Francis Deng, "A Cultural Approach to Human Rights Among the Dinka," in Abdullahi An-Na'im and Francis M. Deng (eds.), *Human Rights in Africa: Cross-Cultural Perspectives,* pp. 261-289 (Washington D.C.: Brookings Institution, 1990); Celestine Nyamu, "The International Human Rights Regime and Rural Women in Kenya," *East African Journal of Peace & Human Rights* 6(1) (2000): 1-33; Sylvia Tamale, "The Right to Culture and the Culture of Rights: Critical Perspective on Women's Sexual Rights in Africa," *Feminist Legal Studies* 16(1) (2008): 47-69; and J. Oloka-Onyango, "Behind and Beyond the Arab Spring: History, Philosophy and

Such reflection represents the search for transformative alternatives to hegemonic liberalism—the life-giving ideology of capitalism—including substitutes to mainstream human rights discourses.[10] Most agree that the Western footprint of international standards, particularly its universalistic and essentializing norms, makes human rights problematic when applied to non-Western cultures.[11] In other words, the idea that *all* rights found in the various human rights treaties apply to *all* human beings equally by virtue of their humanity is problematic because it is based on two faulty assumptions. In the first instance, it assumes that human beings are a single homogenous group with similar characteristics, beliefs, values, needs and cultures. Even where the preamble to the UDHR proclaims that it is setting "a common standard of achievement for all peoples and all nations," suggesting a floor and not a ceiling for the bundle of rights therein, the practice is that the standard is far from common and often very tilted in favour of interests that have nothing to do with the protection of rights, especially of the more vulnerable.

Secondly, it assumes that there was a consensus among the world's human groupings regarding the rights articulated in the treaties. Even if we were to lend a generous reading of that particular historical moment (1948) and view it within Christof Heyns' "struggle approach"[12] in the long journey towards the realization of human rights, this would be making quite a conceptual leap in their theorization. In reality, human rights and their application are much more complex. For instance, those

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Politics in Contemporary Human Rights Struggles," in J. Oloka Onyango, *Battling Over Human Rights: Twenty Essays on Law, Politics and Governance* (Bamenda, Cameroon: Langaa Research and Publishing, 2015).

10. See Nicholas Stump, "Critical Explorations of Human Rights: Recent and Selected Works," *Legal Reference Services Quarterly* (September 2019), DOI: 10.1080/0270319X.2019.1656458; and Ratna Kapur, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (London: Edward Elgar, 2018).

11. Trina Grillo describes "essentialism" as "the notion that there is a single woman's, or Black person's, or any other group's experience that can be described independently from other aspects of the person—that there is an 'essence' to that experience. An essentialist outlook assumes that the experience of being a member of the group under discussion is a stable one, one with a clear meaning, a meaning constant through time, space, and different historical, social, political, and personal contexts." See Trina Grillo, "Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House," *Berkeley Women's Law Journal* 10(1) (1995): 16-30 at p. 19.

12. See Cristof Heyns (2001), "A 'Struggle Approach' to Human Rights," Note 6.

involved in human rights lawyering understand that litigating violations without addressing the historical and structural sources of the violations does little to improve the vulnerability of those who suffer them.[13]

The fact is that humanity is so diverse that the very definition and nature of "rights" differs from one culture to the next. It is also a historical fact that the majority of African countries were missing from the august UN conference rooms that debated and adopted the UDHR.[14] A few years earlier, in 1941, the South African prime minister, General Jan Christian Smuts, had drafted the preamble to the UN Charter. The same architect of apartheid in South Africa reaffirmed in the said preamble: "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small."[15] In 1948, the drafters and guardians of the UDHR seemed to ignore the historical and ironic paradox of endorsing a document that carried the fundamental ideals of human living while in their midst sat colonizers who still occupied and/or controlled one third of the world. At the time, institutionalized racism and apartheid were alive and well in the United States. As one of the few women who played a key role in the process that brought the UDHR to fruition, US first lady Eleanor Roosevelt was not advocating for African women's rights either.[16] This affords us a glimpse at the inconsistencies, contradictions and, above all, the coloniality inherent in the human rights system. Indeed, the absence of Africans in international fora was the norm rather than the exception. In that sense, they were viewed as objects, rather than subjects of international law.

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13. Caroline Bettinger-Lopez, Davida Finger, Meetali Jain, JoNel Newman, Sarah Paoletti and Deborah Weissman, "Redefining Human Rights Lawyering through the Lens of Critical Theory: Lessons for Pedagogy and Practice," *Georgetown Journal of Poverty Law and Policy* 18(3) (2011): 337-400.

14. Only Ethiopia, South Africa, Liberia and Egypt were present at the signing of the UDHR. See Åshild Samnøy, *Human Rights as International Consensus: The Making of the Universal Declaration of Human Rights, 1945-1948*, (Bergen: Chr. Michelsen Institute, 1993).

15. See Preamble to the Charter of the United Nations, 1945. Also see J. D. van der Vyver, "The Concept of Human Rights: Its History, Contents and Meaning," *Acta Juridica* 10 (1979): 10-32 at p. 15.

16. See Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, (New York: Random House, 2001).

Concerns raised by Africans about the legitimacy of universal treaty-based rights are totally valid. That said, an even bigger problem presents itself in the form of African people with political and socioeconomic power who have a tendency to manipulate and deify culture, (mis)appropriating cultural relativist arguments to maintain inequities based on gender, class, sexuality and so forth. For instance, the reactionaries who argue that agitating for gender justice is un-African or that homosexual practices are alien to African culture are simply perpetuating essentialized versions of custom and of Africans. It is important to be wary of such fundamentalists who abuse rights in the name of culture, religion or the nation, deploying them to silence feminist political struggles.

The challenge therefore is how to achieve a balance between the universalistic extreme and the cultural relativist concerns (both of which are essentialist and reductivist) without harming those social groups who operate at the margins of society. A balance needs to be struck between the imposition of abused cultures and those cultural practices that enhance women's quality of life. How do we navigate the multiple layers of human rights law in such a way that it makes sense to Africans generally and to African women in particular?[17] Scholars like Jack Donnelly believe that it is possible to have universal human rights in a multicultural and multi-national world.[18]

The approach that I find most persuasive as an alternative to universality, and one that also lines up with African feminist ideals, is the contextual cultural one, most forcefully advanced by Claassens and Mnisi.[19] They, like many other scholars, challenge the assumptions underlying the dichotomy between rights and culture posited by universalists and cultural relativists, respectively. In particular, they challenge the assumptions that the contents of

17. The category "African women" as a unit of analysis is obviously problematic because of the great diversity and complexity of the lives of women on the continent. I invoke it advisedly and politically as a way to describe a continental social group that is affected by some common conditions of capitalist-patriarchal structures and patriarchal ideologies. The shared socio-historical factors that combine Africans have already been alluded to in the introductory chapter.

18. See Jack Donnelly, *Universal Human Rights in Theory and Practice*, 3rd Ed. (New York: Cornell University Press, 2013).

19. Aninka Claassens and Sindiso Mnisi, "Rural Women Redefining Land Rights in the Context of Living Customary Law," *South African Journal on Human Rights* 25(3) (2009): 491-516.

rights are constant for all time and the same for all (essentialized) or that culture is static and cast in stone. They bring the two extreme positions of universalism and cultural relativism down to reality, which is that in the context of legal pluralism, people "mix and match" various legal regimes to suit their specific interests. Hence, the contextual cultural approach offers more nuance and depth of understanding to people's realities, particularly those living under coloniality. In particular, it captures "the everyday experiences of citizenship as mediated by factors such as gender…"[20] Sudanese scholar Abdullahi An-Na'im also argues for an African concept of human rights which is rooted in communitarianism and critiques the individualism that informs the content of human rights treaties as irrelevant to African contexts.[21]

Given all the above, this chapter begins by discussing the complicated and checkered history of the term "human rights" as it evolved within the Western European cultural and philosophical tradition. The aim of returning to history is to demonstrate that the basic principles of treaty-based human rights evolved to support the capitalist economic system.[22] History will lead to an exposé of both the processes of dominance, and the challenges to dominance, embedded in the historical record of rights.[23] Such analysis queries the universal character of rights, and interrogates their relevance particularly to those who are not beneficiaries of the existing economic system. It begs the question: Which humans are protected by which rights? Moving on, the chapter examines the human rights concept of "gender equality" to exemplify the inefficacy of treaty rights within the African cultural context. In

20. Ibid. at p. 498. Also see Celestine Nyamu-Musembi, "Are Local Norms and Practices Fences or Pathways? The Example of Women's Property Rights," in Abdullahi An-Na'im (ed.), *Cultural Transformation and Human Rights in Africa*, pp. 126-50 (London: Zed Books, 2002).

21. See Abdullahi Ahmed An-Na'im, "The Spirit of Laws is Not Universal: Alternatives to the Enforcement Paradigm for Human Rights," *Tiburg Law Review* 21 (2016): 255-274; and Abdullahi Ahmed An-Na'im, "Problems of Universal Cultural Legitimacy for Human Rights," in A. An-Na'im and Francis Deng (eds.), *Human Rights in Africa: Cross-Cultural Perspectives*, 346-53 (Washington D.C.: Brookings Institution, 1990).

22. See Julius Nyerere, *Freedom and Development* (Nairobi: Oxford University Press, 1973); Adam Smith, *The Wealth of Nations* (London: Dent Son Ltd., 1974); and John Commons, *Legal Foundations of Capitalism* (Madison: University of Wisconsin Press, 1957).

23. Vivian May, *Pursuing Intersectionality, Unsettling Dominant Imaginaries* (New York: Routledge, 2015) at p. 241.

particular, we interrogate the cultural assumptions behind this international human rights norm, revealing its weaknesses in advancing African women's justice when "vernacularized" with a local understanding of its content.[24] Finally, the chapter compares treaty-based human rights to the concept of *Ubuntu* which underlies African traditional justice systems, making a case for its reclamation for socio-legal transformation.

Human? Rights?

The concept of "human rights" and the notion of the "rule of law" are rooted in international treaties both constructed as universal, essential and generic.[25] However, in order to fully appreciate the political forces behind these twin concepts, it is necessary to return to their historical development. Far from being stable, settled and universal, they are heavily contested and deeply contextual. What do the two concepts mean for political identities such as Africans and women who are stigmatized, traumatized and subordinated? This complexity is summed up by Wendy Brown in her rhetorical question: "what does it mean to use a discourse of generic personhood—the discourse of rights—against the privileges that such discourse has traditionally secured?"[26] The fact is that human rights are geopolitically circumscribed and historically contingent.[27]

The expression, "human rights" first made its appearance in Europe at the end of the eighteenth century.[28] Its development coincided with the rise of the industrial revolution to facilitate the smooth running of capitalist commerce and commodity production in a cash-based economy. Prior to that period, it was impossible

24. See Sally Engle Merry, "Legal Pluralism," *Law & Society Review* 22(5) (1988): 869-896.

25. The Western principle of "Rule of Law" enunciates the predominance of promulgated law, a fair trial, equality before the law and the absence of arbitrariness. See Burnett W. Harvey, "The Rule of Law in Historical Perspective," *Michigan Law Review* 59 (4) (1961): 487-500.

26. Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton: Princeton University Press, 1995) at p. 97.

27. Philip Armstrong, "Beyond (Human) Rights?" *Disability Studies Quarterly* 29(4) (2009), available at: http://dsq-sds.org/article/view/989 [accessed August 4, 2019].

28. See Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen*, 3rd Ed. (Philadelphia: University of Pennsylvania Press, 2011).

to speak of a "common humanity" in Western Europe. The pre-capitalist feudal period, which was predominant in Europe from the fifteenth to the eighteenth centuries, was characterized by land-based agrarian economy and was based on status.[29] Societies were extremely hierarchical with the nobility comprising mainly of landlords (free men) on the one hand, while on the other there were serfs and slaves (chattels). Under these circumstances, any semblance of rights or democracy that existed at that time were only for the small minority of the nobility (prelates, earls and barons); in that sense they were *legal* rights, not *human* rights.

The *Magna Carta Libertatum* (the Great Charter of the Liberties) agreed to by King John of England in 1215 was not about human rights either. While it is touted as the sacrosanct embodiment of the idea of human rights, the fact is that it simply laid down guarantees based on the principle of *primus inter pares* (first among equals). The essential purpose of the instrument was to provide the nobility with an iron-clad challenge to the monarchy as the source of their privileges. What was sought was reassurance that the king was not above them and could not control them; he was simply *primus inter pares*. Summarizing Professor Edward Jenk's thesis, Max Radin clarifies: "Nothing was further from their [the nobility's] minds than to announce the rights of men and citizens, or to lay the foundation of liberty. What the great men called their "liberties"—always in the plural—said Jenks, was in fact little more than freedom from royal control and the right to oppress little men, a right some exercised to the hilt."[30]

It is clear that serfs were not considered "human" but simply existed as a sub-human group who did not deserve the same inherited privileges as the nobility. Rather than extending "rights" to everybody, the *Magna Carta Libertatum* simply hardened the privileges of a minority group over the majority "little men and women" who constituted the peasantry of that era. Similarly, the English 1628 *Petition of Right* and the 1689 *Declaration of the Bill of*

29. See Issa Shivji, *Accumulation in an African Periphery: A Theoretical Framework* (Dar es Salaam: Mkuki na Nyota Publishers, 2009).

30. Max Radin, "The Myth of Magna Carta," *Harvard Law Review* 60(7) (1947): 1016-1091 at p. 1061.

Rights were products of demands by the nobility on the king.[31] When "rights" are thus based on status, you cannot speak of "human rights for all" nor can you argue for equality before the law. Delving into history will help us appreciate the incongruence between the Western conception of rights and the African view of social justice.

A Brief History of Treaty-Based Human Rights

Treaty-based human rights are a product of a cumulative history that informs its architecture and discourse. The ideology of human rights as we know it today was incubated during the era of capitalist commodity economy which had been kindled by the European industrial revolution between the 1780s and 1840s. The French and American revolutions of the late 18th century are considered to be the original sites of human rights, resulting from the traditions of Western enlightenment.[32] It is this historically-specific model of rights and its Eurocentric conceptualization which have become hegemonic today. The model found its way into Africa via colonialism and is safely anchored within the constitutions of the 54 nation states of the continent.[33] The problem is that this model of rights is based on conceptualizations that contradict the realities of African people.

When economic production moved from the land to the factory, the transition from serfdom to capitalism was inevitable. During serfdom, the landless peasants were economically and socially bound to the land owned by their landlords. Rent was paid in kind through working the fields and land of their masters. This earned them protection and subsistence benefits from the landlord. In this respect, their status was little better than that of slaves as they had

31. Alex Amankwah, "Constitutions and Bills of Rights in Third World Nations: Issues of Form and Content," *The Comparative and International Law Journal of Southern Africa* 21(2) (1988): 190–211.

32. See Lynn Hunt, *Inventing Human Rights: A History* (New York: W.W. Norton & Co. Press, 2007); and Jonathan Israel, *Democratic Enlightenment: Philosophy, Revolution, and Human Rights, 1750–1790* (Oxford: Oxford University Press, 2011).

33. Not all African countries adopted constitutional bills of rights at independence. Tanzania, for example, did not incorporate a bill of rights in its constitution until 1984 and it was not until 1988 that it became justiciable on the mainland. See Issa Shivji, "Contradictory Developments in the Teaching and Practice of Human Rights Law in Tanzania," *Journal of African Law* 35 (1991): 116–127.

to seek the permission of their landlords to move away from the manor.[34] On the other hand, slaves—most of whom were Black—were the outright chattels of their masters and could be sold and traded like any other property for their free labour. This system worked perfectly for the nobility until the industrial revolution took root in Europe and the economic demands of mercantilism could not be sustained by the conditions of serfdom and slavery.[35]

The absolutism of the dying feudal social order had to end in order to free the serfs. Their freedom was important during the mercantile period of the industrial revolution in order to allow them to easily sell their labour (under exploitative conditions) in the new commodity-producing factories. Consequently, the liberties of the "great men" had to be extended to the "little men," at least to some degree, in the name of *universal* human rights. Under *laissez-faire* ("hands off") politics the ideology of "freedom of contract" flew high, emphasizing minimum state intervention. Of course, in reality, under the exploitative capitalist working conditions, workers had little freedom to negotiate their individual labour contracts. Informing such conceptualization of rights were the material conditions of commodity capitalism where labour power itself was considered as a commodity.[36]

The source of such rights was seen to reside in natural law. During the Enlightenment (seventeenth to eighteenth century), Western philosophers such as Thomas Hobbes, John Locke and Jean-Jacques Rousseau conceptualized rights not to be derived from humans but rather, from nature itself or a divine power. They argued that naturally derived rights were universal and inalienable, applying to all human beings. Such arguments became the foundation of the anti-slavery movement with their opposition touted in the language of universal rights. They also formed the basis of the early declarations of rights in Europe: The *English Petition of Rights* (1627); the *American Declaration of Independence* (1776);

34. See Karl Marx, *Capital: A Critique of Political Economy,* 3 vols., translated by Frederick Engels and Ernest Untermann (Chicago: Charles H. Kerr and Co., 1909-1910).

35. See Paul Gordon Lauren, *The Evolution of International Human Rights,* Note 28.

36. See Karl Marx, *Capital: A Critique of Political Economy,* Vol. 1 (trans. Ben Fowkes) (London: Penguin Books, 1867, 1990).

and the *French Declaration of Rights of Man and the Citizen* (1789).[37] The language of all these documents unabashedly excluded women, emphasizing that rights were possessed of "all men." In reality, such rights were actually available only to the "economic man" of the rising bourgeoisie. Women were literally excluded from the ambit of rights.

Furthermore, all the declarations emphasized the rights to liberty and property.[38] That was the liberty to enter into an economic contract and the right to protect individual property amassed through petty accumulation. Hence, the roots of political liberalism were sown with a primacy placed on the individual, i.e. the individual self-interests of economic man (*homo economicus*). Even then, philosophers such as Edmund Burke bashed documents like the *Declaration of Rights of Man and Citizen* as creating a "monstrous fiction" of human equality which only serves to inspire "false ideas and vain expectations in men destined to travel in the obscure walk of labourious life."[39] Indeed, Burke and others like Jeremy Bentham and John Stuart Mill launched a spirited assault upon the notion that human rights are derived from the "law of nature."[40]

The state came in as the protector of individual rights. The legitimacy of the state to have authority over the individual was conceptualized in terms of a "social contract" which posits that individuals have consented to surrender some of their freedoms to a sovereign ruler in exchange for their protection and security. The protection of private property was vital and central to social contract theory. Hobbes, Locke and Rousseau developed and gave full exposition to this dominant hypothetical social contract.[41] The community structures that people enjoyed in pre-capitalist societies were dissolved into independent individuals within "civil society." For instance, in his 1651 book *Leviathan*, Thomas Hobbes

37. Issa Shivji, *The Concept of Human Rights in Africa*, Note 2, at p. 16. Also see Lynn Hunt, *Inventing Human Rights*, Note 32.

38. Paul Gordon Lauren, *The Evolution of International Human Rights*, Note 28.

39. Quoted in Paul Gordon Lauren, Ibid. at p. 25.

40. Winston Frost, "Human Rights and Justice: A Historical and Philosophical Perspective," *Fides et Historia*, 33(1) (2001): 73-87.

41. See, for example, John Locke, *Two Treatises of Government* (London, 1690), available at: http://www.yorku.ca/comninel/courses/3025pdf/Locke.pdf [accessed October 5, 2019].

argued that the insatiable human desire for power could only be curbed by a strong government to prevent "a war of every man against every man."[42] In this social contract framework individuals "signed" the contract in their personal self-preservation capacities.[43] Jamaican political philosopher Charles Mills correctly argues that "the social ontology is classically individualist, and it demands the creation of a polity that respects the equal personhood of individuals and… their property rights."[44] The atomistic decontextualized individual implicit in this theory excludes the communitarian interests and identities prevalent in non-Western societies. Secondly, and more importantly, in dealing with "freely"-competing individuals, it leaves the underlying sources of structural power intact and unopposed.

Under the so-called social contract, government is established to guarantee the equality of all peoples and the protection of private property. Although this legitimizing contract claims to protect the interests of everyone equally, the reality is that it serves the interests of the few who have gained dominance under the capitalist mode of production. And although such protections were formulated as *civil* and *political* in character, their aim was to improve the *social* and *economic* conditions of the propertied class. Charles Mills characterized it as a "racial contract."[45] Hence, attempts to separate or hierarchize civil/political rights from economic/social ones have always been artificial and should be rejected. Moreover, any contractual relationship presupposes independent parties with bargaining power. The majority of African women and men do not have such power to "negotiate" such a pact with their governments, nor do the latter have the "general will" to work for the common good of *all* its citizens.

Undoubtedly, in the eyes of Hobbes and his associates, in addition to the "contract" being intrawhite, the contracting individuals were also male. A second dimension of this implicit pact

42. Cited in Paul Gordon Lauren, *The Evolution of International Human Rights*, Note 28 at p. 25.

43. Thomas Hobbes, *The Leviathan*, (Revised student edition) (Cambridge: Cambridge University Press, 1996 [1651]).

44. Charles Mills, "Racial Liberalism," *PMLA* 123(5) (2008): 1380-1397 at p. 1381.

45. Charles Mills, *The Racial Contract* (Ithaca: Cornell University Press, 1997). Also see Issa Shivji, *The Concept of Human Rights in Africa*, Note 2.

reveals its gendered character and protects interests based on sex. According to Carole Pateman, in *The Sexual Contract*, the classical concept of "social contract" should be reinterpreted through feminist lenses, exposing its hidden secondary meaning by referring to the various forms of domination of women by men in both the "public" and "private" spheres of life.[46] Governments, which are predominantly patriarchal in nature, are not only designed to protect the interests of the propertied classes but also patriarchal interests, including the power that men generally wield over women. Thus, for the majority of African women, the social contract framework is untenable.[47]

Aside from capitalism, the industrial revolution also grew the labour movement. Workers and other previously disadvantaged and propertyless groups began challenging the classical liberal conception of rights.[48] Indeed, the first international treaty in the corpus of human rights is that which established the International Labour Organization (ILO). Nevertheless, the liberal agenda of human rights largely remained intact. Dubbed economic and social rights, they were relegated to a subordinated second-generation status. Hence freedoms such as organizing labour unions, demanding for minimum wage and social welfare rights were largely considered secondary to the so-called "first-generation" civil and political rights. Moreover, human rights treaties were also weak on cultural or group rights which meant that for oppressed groups, such as women, to speak of "human rights" was equivalent to speaking of "round squares."

Such polarization and hierarchization of rights have been roundly rejected by many human rights theorists.[49] Even the genderization of second-generation rights as affecting women more than men has been objected as not being useful.[50] Indeed, the

46. Carole Pateman, *The Sexual Contract* (Stanford, Stanford University Press, 1988).

47. Ibid.

48. Ziyad Motala, "Human Rights in Africa: A Cultural, Ideological, and Legal Examination," *Hastings International and Comparative Law Review* 12(2) (1989): 373-410.

49. E.g., see Makau Mutua, "The Complexity of Universalism in Human Rights," in András Sajó (ed.), *Human Rights with Modesty: The Problem of Universalism*, pp. 51-64 (Leiden: M. Nijhoff Publishers, 2004); Paul Zeleza, "The Struggle for Human Rights in Africa," *Canadian Journal of African Studies* 41(3) (2007): 474-506; Frans Viljoen, *International Human Rights Law in Africa*, 2nd ed. (Oxford: Oxford University Press, 2012).

50. Aninka Claassens and Sindiso Mnisi, "Rural Women Redefining Land Rights," Note 19.

African conceptualization of "rights" is based on the understanding that they are integral, interconnected and indivisible. Well before this mantra was adopted by the international community at the 1993 World Conference on Human Rights, the preamble to the African Charter on Human and People's Rights clearly proclaims: "Convinced… that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights."[51] Such an intersectional understanding of rights is critical to any decolonization/decolonial efforts. Kimberlé Crenshaw reminds us that no one exists in a single axis; rather, we all exist in matrices/relationships of power and related in multiple, overlapping ways.[52]

Another development under the new capitalist dispensation is a distinct division of labour involving the "public" market where commodity production took place and the "private" domestic space from which the state was largely absent. Men dominated the former sphere while women—albeit under the authority of a male head—did most of the work in the latter. The new artificial line separating the "public" sphere from the "private" one worked to rationalize the intrinsic inequalities of the capitalist system. One of the major and important differences between this gender-based labour structure was that one form of labour was remunerated while the other was rendered gratuitously. Such a structure was essential for capitalist production to maximize profits. Hence, the system exploited the labour of workers who produced in the "public" sphere by paying them wages far below the value that they created in the commodities they produced. The system then unleashed the exploited workers back to their homes where, as "heads of the family," ruled over their fiefdoms as they wished. The unpaid domestic toiling engaged in by women becomes essential to

51. Preamble to the *African Charter on Human and Peoples Rights* (Adopted in Nairobi June 27, 1981 and entered into force October 21, 1986).

52. See Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics," *University of Chicago Legal Forum* 1989 (1989): 139-168. As paraphrased by Vivian May, *Pursuing Intersectionality,* Note 23, at p. 23.

maintain the wellbeing of "public" workers and to subsidize capital by supplementing the wage deficits.[53]

The glory of the natural rights doctrine based on divine power fell during the nineteenth century with the rise of legal positivism. Jeremy Bentham dismissed the abstract nature of natural rights as "nonsense on stilts" and advocated for concrete state-ordained laws and state-prescribed rights.[54] Before him, French philosopher René Descartes had rejected any appeal to natural law based on divine power. The philosophical foundation of knowledge was shifted from God to (Western) man.[55] Legal positivists believe that rights emanate from positive laws enacted by governments. Hence, it is the state that is entrusted with protecting the rights of citizens. Indeed, the state-centric model of human rights protection which is wrapped in the cloth of sovereignty and the mantle of exclusive territorial jurisdiction will inevitably "be limited to the *civil* rights of citizens, not the *human* rights of all people [original emphasis]."[56] Furthermore, positivists are blind to law's social power, presenting it as "objective" and "neutral."[57]

The excesses of Nazi rule in World War II delivered a rude shock to legal positivism. Issa Shivji explains that "natural law and natural rights, by this time under the name of human rights, were resurrected as even positivists like Hart and Fuller wrangled to provide their 'positivism' with a minimum natural law content."[58] Such revival was responsible for the "natural rights" language that peppers the UDHR. In the latter half of the twentieth century, scholars such as John Rawls, Ronald Dworkin and John Finnis

53. See Sylvia Walby, *Theorizing Patriarchy* (Oxford: Blackwell, 1990).

54. See Philip Schofield, Catherine Pease-Watkin and Cyprian Blamires (eds.) *Rights, Representation and Reform: Nonsense Upon Stilts and Other Writings on the French Revolution* (the collected works of Jeremy Bentham) (Oxford: Oxford University Press, 2002) at p. 330.

55. See Ramón Grosfoguel, "Decolonizing Post-Colonial Studies and Paradigms of Political-Economy: Transmodernity, Decolonial Thinking, and Global Coloniality," *TRANSMODERNITY: Journal of Peripheral Cultural Production of the Luso-Hispanic World* 1(1) (2011), available at: https://escholarship.org/content/qt21k6t3fq/qt21k6t3fq.pdf [accessed Nov 13, 2019].

56. Abdullahi Ahmed An-Na'im, "The Spirit of Laws is Not Universal," Note 21 at p. 259.

57. See Nicola Lacey, *Unspeakable Subjects: Feminist Essays in Legal and Social Theory* (Oxford: Hart Publishing, 1998).

58. See Issa Shivji, *The Concept of Human Rights*, Note 2 at p. 17.

breathed new life into the twin concepts of natural law and natural rights.[59]

Ultimately, the hidden blueprints of both natural law and positivism simply reflect the interests of specific classes in the prevailing historical political economies. In other words, human rights hold no eternal truth or supreme values.[60] The legal guarantees that emerged under feudalism served to protect the property interests of the nobility. With the rise of industrial capitalism guarantees evolved into rights to protect the property interests of the dominant class in charge of the means of production. As summarized by Osita Eze, "each new socioeconomic formation represented a higher level of human rights protection, often resulting from the struggle between the ruling class and the oppressed classes."[61] Thus, human rights is a language of struggle within class societies—the struggle against state power that reveals the myth of the social contract. Such language would have been quite anathema to people with communal sentiments.

The inequities and contradictions that characterize capitalist production make it impossible to speak of universal rights for all.[62] This is reflected in the specialized normative human rights instruments that cater for marginalized social groups such as women, people of colour, children, people with disabilities and migrants. Placing human rights into different "silos" ignores the intersecting "horizontal" oppressions that people are subjected to on a daily basis.

The melding of natural rights, positivism and sexism are evident in Article 1 of the UDHR: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." This provision tells us that rights are inherent and natural (born

59. See e.g., John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996); Ronald Dworkin, "'Natural' Law Revisited," *University of Florida Law Review* 34(2) (1982): 165-188; and John Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 1980).

60. See Issa shivji, *The Concept of Human Rights,* Note 2, Ch. 2.

61. Osita C. Eze, *Human Rights in Africa: Some Selected Problems* (Lagos: Nigerian Institute of International Affairs, 1984) at p. 9.

62. See Madina Tlostanova and Walter Mignolo, *Learning to Unlearn: Decolonial Reflections from Eurasia and the Americas* (Columbus, OH: Ohio State University Press, 2012). In particular, Chapter 5, "Who Speaks for the 'Human" in Human Rights?" pp. 153-174.

equal in rights) while at the same time it employs the positivist logic of rational thought (endowed with reasoning). "Brotherhood" suggests that rational thinking is the exclusive preserve of men.

All in all, the Western liberal conception of human rights as discussed above, has no parallel on the African continent. Its philosophical basis lies in diametrical opposition to that of African people. One is founded on the *autonomous* individual while the other is based on *social* individuality. As elsewhere in the world, traditions of human dignity have always existed in African societies. Such traditions are distinguishable from modern UDHR rights which constitute rights against the state. Under a communal inclusive society, rights are claims not against the state but against society: "My humanness depends on your humanness." It emanates from a social paradigm based on reciprocity, solidarity and inclusiveness—values that are far richer than the basis on which modern rights have been founded. Human*ness* describes dignity as well as basic human needs and interests as the common denominator that levels all human distinctions. So when Africa enacted its regional human rights document it attempted to capture such values by incorporating communities-as-rights-holders and giving prominence to culture as a key to justice.[63]

Given the historical development and gendered nature of both the state and the concept of rights, there is little reason for African women to run to the state for protection against violations. The fundamental questions to turn to now are: against the backdrop of the preceding backstory of the political economy of human rights, its socio-legal context and contradictory universalizing and essentialist discourse, should African women continue to pursue "gender equality" as a right? Does culture fare any better for gender justice in Africa?

63. See the African Charter on Human and Peoples Rights (Banjul Charter) available here: https://au.int/en/treaties/african-charter-human-and-peoples-rights [accessed October 5, 2019]. But it must be noted that the drafting and adoption of the Banjul Charter privileged men (all heads of state in Africa at time were men) and the state. This shortcoming eventually necessitated the adoption of a Protocol to the Banjul Charter on the Rights of Women in Africa (Maputo Protocol).

Unpacking the Universalizing Essentialism of "Gender Equality"

Many scholars believe that if we resolve the complex equation of "gender equality," women's emancipation will be nigh. In their bid to solve this problem, the tendency has been to begin by undoing and erasing "culture" from the equation. Culture is perceived as anathema to the successful solution of the "gender equality" equation. The solution? Resort to the factorization of rights, i.e. rights and more rights. Culture is taken to be fixed, anti-women and incapable of adapting. Rights, on the other hand, particularly the right to gender equality, are supposed to be the panacea to the pervasive discrimination and oppression that women suffer from. The tendency is to pit rights against Indigenous culture with the assumption that culture is devoid of gender justice.[64] It is coloniality that brings to light the historical wrongs that have been carefully concealed from the legal paper which carries these rights. Erasing African culture from the realm of how societies on the continent deal with inequities is tantamount to Africa bowing down to colonial whims.

But what exactly do we mean by "gender equality"? Can the concept really fulfil the promise of emancipation for African women? Many women's rights activists in Africa couple the terms "gender" and "equality" without thinking too deeply about their implications. They have also theorized and strongly argued in favour of gender equality.[65] In fact, "gender equality" has become

64. See e.g., Fitnat Naa-Adjeley Adjetey, "Reclaiming the African Woman's Individuality: The Struggle between Women's Reproductive Autonomy and African Society and Culture," *American University Law Review* 44(4) (1995): 1351-1382. For a critique of such views see Celestine Nyamu-Musembi, "How Should Human Rights and Development Respond to Cultural Legitimization of Gender Hierarchy in Developing Countries?" *Harvard International Law Journal* 41 (2000): 381-418; and Sylvia Tamale, "The Right to Culture and the Culture of Rights," Note 9; Susan Moller Okin, *Is Multiculturalism Bad for Women?* (Princeton: Princeton University Press, 1999); and Abdullahi An-Na'im (ed.), *Human Rights in Cross-Cultural Perspectives*, Note 4.

65. See e.g., Brenda Kombo, Rainatu Sow and Faiza Mohamed (eds.), *Journey to Equality: 10 Years of the Protocol on the Rights of Women in Africa* (Nairobi: Equality Now, 2013); Stephanie Röhrs, Annie Hsieh, Monica de Souza and Dee Smythe (eds.), *In Search of Equality: Women, Law and Society in Africa* (Cape Town: University of Cape Town Press, 2014); Kavita Singh, Shelah Bloom and Paul Brodish, "Gender Equality as a Means to Improve Maternal and Child Health in Africa," *Health Care for Women International* 36(1) (2015): 57-69; Nolutho Diko, "Changes and Continuities: Implementation of Gender Equality in a South African High School," *Africa Today*, 54(1) (2007): 107-116; and

the *sine qua non* of feminist agitation globally and it is difficult to imagine disturbing its "integrity." But the term "gender" has long been contested by women from the global South for its essentializing or homogenizing utility that imagines all women to suffer oppression in the same way.[66] And while the legal term "equality" within the paradigm of universalized human rights invokes righteousness and fairness, in reality, it is a concept that rings hollow for many of the marginalized. Its very conception as "sameness" or "equivalence" has been challenged by many theorists, compelling us to recast the dominant discourses of patriarchy and oppression.[67] Does gender equality imply that men and women must be the same, take on the same roles, and be treated in the same way? Or is it about attaching the same value to their natural and social differences? Should we focus on the complementarity between the sexes instead of their equivalence? In other words, must the natural and socially constructed differences between men and women be viewed in hierarchical terms or do we need to look deeper? If we do, is it possible to forge equitable and mutually beneficial relationships between the different genders?

While the category "women" may be useful in some contexts for challenging gender-specific oppressions against this social group, its liberatory potential is quite limited. Would "women," for example, include intersexed persons, transgender women or lesbian women? Ramón Grosfoguel reminds us that "identity politics" cannot lead to transformative change because of their links to coloniality of power. He argues that "identity politics only addresses the goals of a single group and demands equality within the system rather than developing a radical anti-systemic struggle

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Obioma Nnaemeka and Joy Ngozi Ezeilo (eds.), *Engendering Human Rights: Cultural and Socioeconomic Realities in Africa* (New York: Palgrave Macmillan, 2005).

66. See e.g., Ifi Amadiume, *Male Daughters, Female Husbands: Gender and Sex in an African Society* (London: Zed Books, 1987); Oyeronke Oyewumi, *The Invention of Women: Making an African Sense of Western Gender Discourses* (Minneapolis: University of Minnesota Press, 1997); and Chandra Talpade Mohanty, "Under Western Eyes: Feminist Scholarship and Colonial Discourses," *Boundary 2* (print) 12(3) (1984): 333-358.

67. See e.g., Celestine Nyamu-Musembi, "How Should Human Rights and Development Respond" Note 64; Fareda Banda, *Women, Law and Human Rights*, Note 5; and Mojubaolu Okome, "Listening to Africa, Misunderstanding and Misinterpreting Africa: Reformist Western Feminist Evangelism on African Women," Paper presented at the 42nd Annual Meeting of African Studies Association, Philadelphia, Pennsylvania (11-14 November, 1999).

against the systemic and planetary Western-centric civilization. The system of exploitation is a crucial space of interventions that requires broader alliances along not only racial and gender lines but also along class lines and among a diversity of oppressed groups around the radicalization of the notion of social equality."[68]

The preceding historical examination of human rights clearly reveals its core purpose and enforcement agenda. Such a regime of international human rights protections has indeed proved inadequate to liberate marginalized groups, let alone African women, from the multiple oppressions they suffer. Many commentators have highlighted the limitations of liberally-conceived human rights in securing gender-related liberties to women and sexual minorities. Indian feminist theorist Ratna Kapur is quite blunt in her critique: "The grim truth is that, on some level, our rights-related liberal projects are on life support and further palliation is pointless."[69] Neither International NGOs (INGOs) like Amnesty International (AI), The International Commission of Jurists (ICJ) and Human Rights Watch (HRW), nor local NGOs are likely to deliver freedom beyond some limited survival. This is because their ideological orientation is largely based in Western liberal individualistic understandings of rights rather than in underscoring the critical vitality of group rights.[70] All of them operate within the universalistic and essentialist norms that undergird the international human rights framework and the concept of gender, respectively. Inevitably, the decolonial project would reject the racism that underlies the ideas of universalism and essentialism.

The limitations of the universalistic understandings of human rights must be placed on the same plane as essentialist understandings of the term gender. African scholars such as Ifi Amadiume, Nkiru Nzegwu and Oyeronke Oyewumi destabilized

68. Ramón Grosfoguel, "Decolonizing Post-Colonial Studies and Paradigms of Political-Economy: Transmodernity, Decolonial Thinking, and Global Coloniality," *Transmodernity: Journal of Peripheral Cultural Production of the Luso-Hispanic World*, 1(1) (2011), available at: https://escholarship.org/content/qt21k6t3fq/qt21k6t3fq.pdf [accessed Nov 13, 2019].

69. Ratna Kapur, *Gender, Alterity and Human Rights*, Note 10 at p. 172.

70. See Makau Mutua, *Human Rights: A Political*, Note 3; and Henry Steiner and Philip Alston, *International Human Rights Law in Context: Law, Politics, Morals*, 2nd ed. (Oxford: Oxford University Press, 2000).

the solid foundation on which the Eurocentric term "gender" was constituted. They highlighted the importance of appreciating the multiple explorations of the dynamic concept and its cultural specificity.[71] They also demonstrated how frustrating it was to extrapolate the public/private gendered dichotomy to West African societies where women had, from time immemorial, participated in public market spaces and politics.[72]

Gender, uncritically viewed through Western eyes, also came under attack in Chandra Mohanty's essay "Under Western Eyes."[73] She critiqued the gender politics through which some Western feminists analyzed and produced "Third World Women" as a singular monolithic. Like Amadiume *et al.*, Mohanty has questioned Western feminist assumptions underlying gender inequality which contend that *all* non-Western women, regardless of their historical or cultural contexts, are bound together by similar oppressions and powerlessness. This, she argues, amounts to constructing women as the collective "Other."[74]

The term "equality" appears twenty-two times in the text of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This is not surprising given that equality and discrimination are basically two sides of the same coin. The concept of equality is also found in the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) at least six times. In fact, the preamble to the Protocol proclaims: "Recognising the crucial role of women in the preservation of *African values based on the principles of equality*, peace, freedom, dignity, justice, solidarity and democracy…" [emphasis supplied]. The statement suggests that the juridical principle of equality is inherently African. This is false because the seed from which the principle was germinated was totally foreign.[75] There is consequently a need to challenge the claim to the "Africanness" of the liberal right to equality and to demonstrate

71. See Chapter 4 of this book.

72. Ifi Amadiume, *Male Daughters, Female Husbands*, Note 66.

73. Chandra Talpade Mohanty, "Under Western Eyes" Note 66.

74. Ibid. at p. 333.

75. See Fareda Banda, "Blazing a Trail: The African Protocol on Women's Rights Comes into Force," *Journal of African Law* 50(1) (2006): 72–84 at p. 77.

that adopting terms and strategies that reflect the Afrocentric worldview (based on communitarianism, interdependence and solidarity) is more likely to engender real gender justice that affirms social diversity. In other words, instead of championing the language of rights, it would be more effective to attune our advocacy to the cultural contexts of Africa.

The term "equality" is indeed all Greek to African *wananchi*. The roots of the word "equal" can be traced to the Latin term *Aequalis* which means uniform or identical and was used to identify goods in early barter trade.[76] In the fourteenth century the British borrowed the term "equality" from the French word *equalité*.[77] At its core, the term has never evolved from its original use in mercantile trade. In patriarchal-capitalist liberal states, the association of notions such as autonomy, choice, contract and the market to the concept of "equality" pose serious dilemmas for women, particularly African women.

The term "equality" looks good on paper and makes for great political rhetoric. But most African women know that "gender equality" is a mirage, a "pipe dream" that needs to be unpacked. For them, equality is an abstract alien concept that holds little meaning in reality as they see those who tout it in the name of human rights using it very selectively, even politically. They mock its liberal origins with the aphorism of the different lengths of the five fingers of a hand to justify "natural" inequality and subordination. Indeed, the average person on the continent is viscerally opposed to the concept of human equality. Such resistance to equality partly stems from hierarchized religions and reconstructed cultures that are deeply internalized through everyday practices and propped up by various systems and institutions of power.[78] More importantly, it is a resistance that stems from an inability to discursively relate to a

76. Lon L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1964).

77. Robert Barnhart, *The Barnhart Concise Dictionary of Etymology* (New York: HarperCollins, 1995).

78. Filomina Chioma Steady correctly argues that African feminism "combines racial, sexual, class and cultural dimensions of oppression to produce a more inclusive brand of feminism… It can be argued that this type of feminism has the potential of emphasizing the totality of human experience, portraying the strength and resilience of the human spirit and resounding with optimism for the total liberation of humanity." See F. C. Steady, "African Feminism: A Worldwide Perspective," in Rosalyn Terborg-Penn, Sharon Harley and Andrea B. Rushing (eds.), *Women in Africa and the African Diaspora*, pp. 3-24 (Washington DC: Howard University Press, 1987) at pp. 4-5.

concept whose tentacles do not extend very far within the African cultural context.

The Western paradigm of equality was, and still is, fraught with problems. Even in the global North, the notion has not yielded any significant results for women.[79] The U.S. Equal Rights Amendment (ERA) which proposed to impose a single standard of sameness on the position of American men and women in all spheres of life has been in limbo since 1982.[80] Many times, equality is viewed narrowly from a quantitative frame; the mere physical presence of women (say, in political spaces or boardrooms) is seen as the solution to equality with men. Moreover, women's underrepresentation is often the focus of analysis and not men's overrepresentation. Another problem is that when arguing for equality with men, the social dimensions that define "women" and "men" are often ignored. The multiple identities that interact and intersect with gender such as race, ethnicity, class, religion, disability, sexuality are invisibilized and glossed over.[81] Which women should be equivalent to which men? Given that the concept of "equality" is predicated upon fundamental but flawed notions of liberal individualism and universalism, its efficacy needs to be interrogated. The urge for the internationalist feminist project to generalize, basically essentializes women, obscuring their intersectional differences and oppressions.[82]

Equality is a subjective idea that entails normative judgments. Moreover, the scaffolding that structures "equality" is largely Eurocentric and monocultural. Hence, the individuality that underscores contemporary notions of gender equality poses a specific problem for African women. If the juridical concept of

79. See Joanne Conaghan and Louise Chudleigh, "Women in Confinement: Can Labour Law Deliver the Goods," *Journal of Law and Society* 14(1) (1987): 133-148.

80. As the proposed 27th Amendment of the U.S. Constitution, ERA failed to get the requisite number of state ratifications after it had been passed by the U.S. Congress in 1972. It died in 1982 when the extended period for its ratification expired. See Mary Frances Berry, *Why ERA Failed: Politics, Women's Rights, and the Amending Process of the Constitution* (Indianapolis: Indiana University Press, 1986); and Sarah Soule, "When do Movements Matter? The Politics of Contingency and the Equal Rights Amendment," *American Sociological Review* 69 (2004): 473-497.

81. See Mieke Verloo (ed.), *Multiple Meanings of Gender Equality: A Critical Frame Analysis of Gender Policies in Europe* (Budapest: Central European University Press, 2007).

82. See Annie Bunting, "Theorizing Women's Cultural Diversity in Feminist International Human Rights Strategies," *Journal of Law and Society* 20(1) (1993): 6-22 at pp. 11-13.

equality is to resonate more firmly with African people, we need to strategically and creatively rethink the manner in which it is conceptualized. It is crucial to move away from the narrow quantitative conceptualization of equality towards a more qualitative, participatory and "Africanized" notion.[83] Values such as equity, social justice and *Ubuntu* resonate much more with the traditional understandings of most African people. After all, substantive equality is about levelling the ground by addressing systemic injustices that trump the dignity and human worth of the marginalized.

Some feminists have argued against the rejection of mainstream doctrines such as equality in the struggle for women's rights. Instead, they make a case for transforming the doctrine to suit the needs of women.[84] But is it really possible to transform and sever a doctrine from its historical and socio-cultural umbilical cord? Would such a "transformed" doctrine be able to serve interests that are different from what it was originally purposed? I think not. In the next section of the chapter, we introduce the basic characterization of the legal concept of equality. Then, the chapter examines the differences between formal and substantive equality through a discussion of two Western origins of "equality", one by Aristotle based in natural law and the other by John Rawls rooted in the political philosophy of liberalism. Finally, we sketch the key elements needed for an alternative approach to gender justice based on the African conception of *Ubuntu*.

Analyzing the Western Origins of "Equality"

The concept of equality fosters liberal Western values embedded

83. See e.g., Dolores Aldridge and Clarence Young (eds.), *Out of the Revolution: The Development of Africana Studies* (New York: Lexington Books, 2001); Filomina Chioma Steady (ed.), *Black Woman Cross-Culturally* (Rochester, VT: Schenkman Books, 1980); Lucinda M. Finley, "Transcending Equality Theory: A Way Out of the Maternity and the Workplace Debate," *Columbia Law Review* 86(6) (1986): 1118-1182 at p. 1158; Christine Littleton, "Reconstructing Sexual Equality" *California Law Review* 75(4): 1279-1337 (1987); and Ruth Colker, "Feminist Litigation: An Oxymoron? – A Study of the Briefs Filed in William L. Webster v. Reproductive Health Services," *Harvard Women's Law Journal* 13 (1990): 137-188.

84. E.g., see Laura Stein, "Living with the Risk of Backfire: A Response to the Feminist Critiques of Privacy and Equality," *Minnesota Law Review* 77 (1993): 1153-1191.

in the autonomy of the individual rights holder.[85] This means that, under its historical formulations, "the equal treatment mode of equality at best gives some autonomous right holders the entitlement to the same rights as other autonomous right holders."[86] Such formulation was developed in European traditions, which animated Makau Mutua to ask the pointed question: "If social truths are contextual, cultural, historical, and time-bound, how can one find the relevance of the human rights project in Africa?"[87] In most of Africa, the traditional ethos values the community over the individual and foregrounds interconnected relationships. In general the African worldview is relational and formed through active engagement with the ecology and the community.[88] We are horizontally connected to our communities and vertically linked to our ancestors and offspring.[89] And as De Quincey reminds us, "Each of us is a meeting point, a center of convergence, for countless threads of relationships."[90] Consequently, Western theories, models and concepts do not fit into African contexts without some serious critique.

The philosophy of communitarianism is not unique to Africa but is core to other non-Western cultures. The traditions of non-duality among Buddhists and the Hindu (*Advaita*) and the *yin-yang* dynamics of the Taoists also adopt interconnectedness in valuing the ecological health of the individual and of the community.[91] They emphasize our relationship with the natural environment, with our

85. "Liberalism" as used here refers to a broad range of historical and contemporary philosophy as espoused by classics ranging from Aristotle, Thomas Hobbes and Jean-Jacques Rousseau to John Rawls and Robert Nozick. The basic tenets that run through all their conceptions of political and moral theories include abstract individualism and freedom to operate, at least formally, on an equal basis.

86. Laura Stein, "Living with the Risk of Backfire" Note 84, at 1169.

87. Makau Mutua, "Human Rights in Africa," Note 4 at p. 20.

88. J. Kudadjie, & J. Osei, "Understanding African Cosmology: Its Content and Contribution to World-view, Community and the Development of Science," in C. W. du Toit (ed.), *Faith, Science and African Culture: African Cosmology and Africa's Contribution to Science* pp. 33–64 (Pretoria: Research Institute for Theology and Religion, University of South Africa, 2004).

89. Elza Venter, "The Notion of *Ubuntu* and Communalism in African Educational Discourse," *Studies in Philosophy and Education* 23 (2004): 149-160.

90. Christian De Quincey, *Radical Knowing: Understanding Consciousness through Relationship* (Rochester, NY: Park Street Press, 2005).

91. See Hongyu Wang, "A Nonviolent Approach to Social Justice Education," *Educational Studies* 49(6) (2013): 485-503.

ancestors (spiritual lineage) and with the animal world in our quest for harmony.[92] These traditions provide a fresh lens through which we can reconceptualize the notion of social justice.

The individualistic notion of equality assumes a default value, some standard against which equality can be measured. Not only is the comparator masculine but he is also White, middle-class, able-bodied, Christian and heterosexual. There is a steady stream of feminist scholarship that has exposed the masculine perspective of the law.[93] These scholars argue that, under liberalism, the law creates legal rights such as "equality" to allow for separate, atomistic competing individuals to pursue their own interests and to protect them from the interference of other individuals.[94] Any deviation from the standard individual is devalued as less deserving of rights-protection. By the dominant discourse creating a standard—the centre unit on which equality must be gauged—it inevitably creates a contentious relationship involving "us" and "them," with the former residing at the centre and the latter at the margins. Under the rubric of "equality" not only are the interests of the individual paramount (albeit in the name of the collective), but women are constantly required to compare themselves with men.

Such a posture fits in perfectly with the contentious Western legal framework where competing claims are resolved in the context of blame, guilt and defence. As Wang observes: "When an individual (or a group) is considered an entity in itself, separate from others, social justice, in its emphasis on the social welfare of all participants as equals does not necessarily lead to better social relationships but may slip into another version of the (group) self

92. See Jinting Wu, Paul William Eaton, David W. Robinson-Morris, Maria F. G. Wallace and Shaofei Han, "Perturbing Possibilities in the Postqualitative Turn: Lessons from Taoism (**道**) and *Ubuntu*," *International Journal of Qualitative Studies in Education* 31(6) (2018): 504-519; Roman Meinhold (ed.), *Environmental Values Emerging from Cultures and Religions of the ASEAN Region* (Bangkok: Guna Chakra Research Centre, 2015).

93. see Fareda Banda, *Women, Law and Human Rights*, Note 5; Catharine MacKinnon, *Sex Equality*, 2nd Ed. (New York: Foundation Press, 2007); Frances Olsen (ed.), *Feminist Legal Theory I: Foundations and Outlooks* (New York: New York University Press, 1995); and Margaret Thornton, "Authority and Corporeality: The Conundrum for Women in Law," *Feminist Legal Studies* 6(2) (1998): 147-170.

94. See e.g., Catharine A. MacKinnon, "Feminism, Marxism, Method, and the State: An Agenda for Theory," *Signs* 7(3) (1982): 515-544; and Linda C. McClain, "Atomistic Man Revisited: Liberalism, Connection, and Feminist Jurisprudence," *South California Law Review* 65 (1992): 1171-1264.

in the name of the collective."[95] The benchmark of juridical equality also reduces variables to binary values such as sex/gender dualisms, i.e., male/female and masculine/feminine. Equality navigates through a maze of dichotomous divisions of labour within capitalist societies.[96] After such dichotomization, it becomes difficult to give legal recognition to classifications like intersex and transgender that fall outside the normative binaries.

Hence, the more similar a woman is to the standard male and the more attributes she shares with him, the more likely she is to claim equality legally. As Celestine Nyamu argues, the rights discourse "lends itself to exclusive use by the 'talking classes'—those who command the means to exploit avenues such as the legal system through which this discourse takes place."[97] All this, of course, operates under assumptions of individual agency. Individual rights most benefit privileged women. Hence, a White, middle-class, heterosexual woman (individually or as a collective) is more likely to succeed in her claim for juridical equality with the hegemonically-constructed "standard." African women, on the other hand would have to assimilate (rather than embrace their traditions and values) in order to "legitimately" demand for their rights.[98] Statutory law reform to enhance rights is therefore not the best strategy to pursue for the majority of African women. I agree with Claassens and Mnisi when they argue that "strategies that focus on attaining individual ownership for women have been criticized as relevant only to small numbers of middle class women and for failing to articulate with the concerns of women whose survival is embedded within a web of reciprocal family and community relationships, for whom the protection and preservation of the land rights vesting in the family

95. Hongyu Wang, "A Nonviolent Approach to Social Justice Education", Note 91, at. p. 490.

96. Tim Kaye, "Natural Law Theory and Legal Positivism: Two Coins of the Same Practical Coin?" *Journal of Law and Society* 14(3) (1987): 303-320, at p. 305.

97. Celestine Nyamu, "The International Human Rights Regime and Rural Women in Kenya," *East African Journal of Peace & Human Rights* 6(1) (2000): 1-33, at p. 1.

98. But even for men, the experience of a biological male is quite different from that of a cultural male. Under heteropatriarchy, superiority is tied to the biological male and dominance is constructed for the conforming cultural male. A homosexual male who deviates from the normatively constructed masculinity, for example, will also suffer inequality.

or group may be a priority."[99] Using the example of land to demonstrate how traditional customs may enhance the liberties of rural-based women, they further explain:

> Customary entitlements to land vesting in women are rendered invisible to the formal legal system even in instances where women continue to use and occupy the land in question. For many women living in rural areas, the only means of countering threatened evictions lies in asserting use and occupation rights derived from customary entitlements that are at odds with overlaid 'formal' legal rights held by men. Legal strategies that seek to avoid the customary arena may unwittingly remove the ground from under the feet of those women for whom customary entitlements are the best or only basis on which to assert or prove land rights.[100]

Consequently, the more different you are from the ruling standard, the less deserving you are of equal treatment. Difference is interpreted as inequality.[101] The result of negative recognition of difference is "Othering" and when you are labelled as the "Other" you are made to feel inferior.[102] Women experience this all the time. A Black woman would experience the othering inferiority differently from a White woman. And yet the way a Black, lesbian, disabled, Muslim, immigrant woman would experience Othering inferiority would be totally different from the first two women.

Formal Equality versus Substantive Equality

As already noted, most constitutions in Africa enshrine the equality protection clause.[103] Many conceptualize equality through the

99. Aninka Claassens and Sindiso Mnisi, "Rural Women Redefining Land Rights," Note 19, at p. 492.

100. Ibid.

101. Catharine MacKinnon, *Sex Equality*, Note 93.

102. Gayatri Chakravorty Spivak, "The Rani of Sirmur: An Essay in Reading the Archives" *History and Theory* 24 (3) (1985): 247-272; also see Chandra Mohanty, "Under Western Eyes," Note 66.

103. Even the constitutions of the only two African countries yet to ratify CEDAW carry the equality protection clauses. Article 11(1) of the 2012 constitution of Somalia provides: "All citizens, regardless of sex, religion, social or economic status, political opinion, clan, disability, occupation, birth or dialect shall have equal rights and duties before the law"; and Article 31 the 2005 Interim National Constitution of Sudan provides:

liberalized lenses of an abstract autonomous individual. We have seen that such a formalized conception requires all persons in the same situation to be accorded the same treatment. Hence, constitutions outlaw the different treatment of people based on grounds such as sex, race, ethnic origin, tribe, religion, economic standing or disability. Catharine Mackinnon attributes formal equality to the Greek philosopher Aristotle, who espoused "equality" as consisting in "the same treatment of similar persons."[104] According to this natural law philosopher, if one is naturally the same, then naturally one is to be treated the same; and if one is different, then naturally, one must be treated differently. Using this Aristotelian conception of equality, one can easily justify sexism as well as practices such as genocide, slavery, apartheid and homophobia. It is this equality principle that was exported from Europe to Africa via colonialism. The colonial "natives" were empirically different from the Western imperialists, which "justified" their different (discriminatory) treatment. Here, the relatively darker skin colour was the yardstick used to measure difference, with the pink complexion becoming the dominant standard. And all the while, skin tones were simultaneously read as gendered race. Formal equality, therefore, is superficial with no substance; a meaningless term that does not understand the configurations of structural power in society.

More contemporary conceptions of "equality" did little to address the limits of Aristotle's views of equality and justice. Just like his predecessor, John Rawls conceived of equality through Western liberal political thought which foregrounds the rights of the individual to personal autonomy and political recognition.[105] Rawls' first principle of justice reflects the underlying individualistic theory on which it is built: "Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all."[106] Such a principle exhibits

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"[a]ll persons are equal before the law and are entitled without discrimination, as to race, colour, sex, language, religious creed, political opinion, or ethnic origin, to the equal protection of the law."

104. Aristotle, *The Politics* [cited in Catharine Mackinnon, *Sex Equality*, Note 93].

105. John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971) at p. 61.

106. Ibid. at p. 250.

the inbuilt bias towards individualism which, as noted by Woodman, "subordinates the individual's well-being to the group, such as the African family, local community or ethnic group."[107]

Rawls employs the methodology of abstraction to make a case for equality of this liberal abstract individual (read economic male) who is supposed to represent all of us. "The person" suggests that all of us fit the bill. However, as observed by Susan Moller Okin, "while liberal theorists claim to be writing about individuals, scratch the surface of any of their theories and you will find out that they are almost all actually talking about male heads of households."[108] The result of such universalistic abstraction is to disguise hierarchy and ignore the lives and voices of so many people who are different from the veiled constructed standard male discussed earlier. I agree with Albertyn and Goldblatt when they argue that: "Abstract individualism which focuses on rights-bearing human beings [is] devoid of social relationships and outside of contextual reality."[109]

For Rawls, liberal people should count as equals; they must be "well-ordered" in order to be considered as equals.[110] What this really translates into is that the liberal capitalist state should protect the freedom of private commercial exchange between liberal individuals, *equally*. Hence, equality under a *laissez-faire* system was about facilitating liberal autonomous individuals to bring their wares to the market place on equal terms with other autonomous liberals. Such conceptualization deliberately places blinders on market participants whose social status gives them no bargaining power to compete freely, fairly and equally.[111]

More importantly, Rawls' theory is weighed down with patriarchal assumptions that erase individuals who occupy spaces

107. Gordon Woodman, "Legal Pluralism and the Search for Justice," *Journal of African Law* 40(2) (1996): 152-167 at p. 153.

108. Susan Moller Okin, "'Forty Acres and a Mule' for Women: Rawls and Feminism," *Politics, Philosophy and Economics* 4(2) (2005): 233-248 at p. 234.

109. Cathi Albertyn and Beth Goldblatt, "Facing the Challenge of Transformation: Difficulties in the Development of an Indigenous Jurisprudence of Equality," *South African Journal on Human Rights* 14(2) (1998): 248-276 at p. 251. Also see Sherene Razack, *Looking White People in the Eye: Gender, Race, and Culture in Courtrooms and Classrooms*, (Toronto: University of Toronto Press, 1999).

110. John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 1999).

111. See Claire Cutler, "Global Capitalism and Liberal Myths: Dispute Settlement in Private International Trade Relations," *Millennium Journal of International Studies* 24(3) (1995): 377-397.

outside of the market in the supposedly apolitical domestic sphere, i.e., women. The liberal autonomous, self-sustaining individuals constructed by Rawls are also fictitious because in fact human beings are by nature interdependent. For example, most male heads of households depend on the caring work of their female partners who provide them with physical, emotional and nutritional sustenance, even as they oppress and exploit these very same women.[112] The patriarchal-capitalist state greatly depends on women's domestic production and reproduction for its very sustenance. Hence, the unpaid labour of women in the domestic arena sits as a constant reminder of the insufficiency of formal legal equality. Martha Fineman makes the same point differently. She argues that the notion of total capacity or self-sufficiency is a myth. For her vulnerability is the real character of the human condition and therefore, she argues, the legal foundations of human rights have to change. That is, changing from an assumption of capacity and autonomy to recognizing, and responding to "the vulnerable subject."[113]

Furthermore, not only does the liberal individualistic characterization of equality denigrate communities but it also ignores group-based systemic oppression. Thus, social groups such as women, Blacks, the impoverished, the disabled and homosexuals are pushed out of Rawls' conceptualized "equality" status based on a moral internal logic of the individual. Those that are privileged by group oppression gain both materially and psychologically from it and such privilege comes to them as members of that privileged social group.[114] All men will benefit from structural sexism just as all Whites stand to profit from structural racism.

The basic inadequacy and gross injustice that resulted from the legal concept of "equality" as a basis for achieving gender equity for marginalized groups prompted scholars, and even the United Nations, to reconceptualize its meaning by distinguishing its formal dimension from the substantive one. It was mistakenly

112. Susan Moller Okin, "Forty Acres and a Mule" Note 108; also see Carole Pateman, *The Sexual Contract*, Note 46.

113. Martha Albertson Fineman, "The Vulnerable Subject and the Responsive State," *Emory Law Journal* 60(2) (2010): 251-276.

114. Ann Cudd, *Analyzing Oppression* (Oxford: Oxford University Press, 2006).

believed that if *de jure* equality had failed to deliver justice in ways that engendered social justice through women's lived experiences and in their diversity, then *de facto* equality would solve the problem. The UN CEDAW Committee encapsulated this distinction in its 2004 General Recommendation 25 where it expounded on the meaning of *de facto* equality. It equated *de facto* equality with substantive equality and prescribed non-identical treatment between women and men (e.g., affirmative action) to achieve "equality of result."[115]

Mechanisms designed for achieving equity such as affirmative action work to positively recognize and accommodate groups that have historically suffered systemic patterns of disadvantage due to their difference. So, for example, the positive recognition of women's differences from men would require their "special" treatment based on their differences with men in order to arrive at an equal outcome. Here, "special" does not mean "more valued" or "more entitled" but simply "unique." It was noted that differences based on women's biological make-up or their culturally-assigned gender roles, only become problematic where they perpetuate subordination and oppression. Hence, "special" treatment, such as affirmative action was simply meant to ensure that the effects of difference were "costless."[116] It required society and the law to treat women differently from men in order for women to *equally* enjoy rights. In order to remove the barriers that exclude women from full participation in society, substantive equality focused on equality of *results* (as opposed to equality of treatment), to avoid the equality of mere rhetorical rights or opportunities.

However, studies have shown that affirmative action policies in Africa, while quite effective in addressing the narrow reformist goal of quantitative underrepresentation, do very little to address the structural foundations of gender injustice.[117] Disadvantage remains

115. See CEDAW General Recommendation No. 25 on Article 4, Paragraph 1 of CEDAW, (thirtieth session, 2004). Official Records of the General Assembly, Thirtieth Session, Supplement No. 38 (A/59/38), Paragraph 8.

116. See Christine Littleton, "Reconstructing Sexual Equality," *California Law Review* 75(4) (1987): 1279-1337, (Quoted in Albertyn and Goldblatt, "Facing the Challenge of Transformation," Note 109).

117. E.g., see Aili Mari Tripp, "Women and Democracy: The New Political Activism in Africa," *Journal of Democracy* 12(3) (2001): 141-155; Sylvia Tamale, *When Hens Begin to Crow: Gender and Parliamentary Politics in Uganda* (Boulder, CO: Westview Press, 1999);

and, for African women, has often provoked severe backlash and a rolling back of many liberties. At the end of the day, CEDAW fell short of its promise of substantive equality, particularly because affirmative action generally "works at the behest of state power and its successful recognition depends on the state."[118] The tendency is for the heteropatriarchal-capitalist state and other dominant entities to abuse such policies through co-optation and fragmentation. Substantive equality ends up not bearing much substance when it glosses over the complexities of gender hierarchization. Importantly, substantive equality is still rooted in liberal individualism, which makes it ill-equipped to address instititutionalized forms of oppression such as sexism and racism.

So whether we employ the Aristotelian formula of "treating likes alike" or the CEDAW one of "equality of results," the majority of African women still end up with the rough end of the stick. No amount of tinkering with the various dimensions of substantive equality would achieve transformative change in the condition and status of African women.[119] What is needed is an epistemic shift from the liberal human rights paradigm. Ratna Kapur's counsel to explore alternate, non-rights and non-liberal registers that will deliver substantive justice to women would be useful.[120] Or taking Claassens and Mnisi's direction towards the "vernacularization of rights" – by infusing them with local understandings of their content.[121] It is my contention that this can be done through the reification of time-tested African concepts such as *Ubuntu.*

Jane Osongo, "Affirmative Action, Gender Equity and University Admissions—Kenya, Uganda and Tanzania," *London Review of Education*, 7(1) (2009): 71-81;

118. Rachel Rebouche, "The Substance of Substantive Equality: Gender Equality and Turkey's Headscarf Debate," *American University International Law Review* 24(4) (2009): 711-738 at p. 734.

119. Sandra Fredman argues that the right to substantive equality remains a powerful one and suggests a four-dimensional approach "that recognizes and addresses the distributional, recognition, structural and exclusive wrongs experienced by out-groups." The structural changes suggested here are not transformational enough to address the socioeconomic position of African women. See Sandra Fredman, "Substantive Equality Revisited," *International Journal of Constitutional Law* 14(3) (2016): 712-738 at p. 738.

120. Ratna Kapur, *Gender, Alterity and Human Rights.* Note 10, Ch. 6.

121. Aninka Claassens and Sindiso Mnisi, "Rural Women Redefining Land Rights," Note 19, at p. 498.

Reconceptualizing Justice through *Ubuntu*

This final section of the chapter expounds on how African women can deploy culture in their struggle for gender justice by reconceptualizing the meaning and use of the term "equality." How appropriate are the universalistic standards of the liberalized right to equality to the lives of African women? Where do African feminist aspirations lie within the broader international feminist project? Is it possible to restore respect and dignity for women through African socio-philosophical understandings of living, of knowing and of being? How can we resourcefully utilize the tradition of *Ubuntu* in order to mould and shape social relations that enhance gender justice?

Philosophically, the closest equivalent to the notion of "human rights" in many African societies would be the concept of *Ubuntu.* A number of African philosophers distinguish the importance of community to African people, as opposed to the autonomous individualism common in many of the dominant philosophies found in Western societies.[122] These philosophers call for a (re)engagement with Indigenous forms of living, knowing and being and it is time for African feminists to take heed of them. They trace such an ethos in the roots of most Indigenous African social structures which thrived on the principles of communitarianism and solidarity.[123] The common maxim, "I am because you are" sums up the reciprocity and interconnectedness that is alive in the worldview of most Africans; its shorthand notation is the South African term *Ubuntu.*[124] Describing what she terms "Afro-communitarianism," Rianna Oelofsen insists that *Ubuntu* is "not

122. See, for example, Kwame Nkrumah, *Consciencism: Philosophy and Ideology for Decolonization and Development with Particular Reference to the African Revolution* (London: Heinemann, 1964); Leopold Senghor, *On African Socialism*, Mercer Cook (trans.), (New York: Praeger, 1964); Julius Nyerere, *Ujamaa – Essays on Socialism* (Dar-es-Salaam: Oxford University Press, 1968).

123. Kwame Gyekye, "Person and Community in African Thought," in: Kwasi Wiredu, and Kwame Gyekye (eds.), *Person and Community: Ghanaian Philosophical Studies 1*, pp. 101-122 (Washington DC: The Council for Research in Values and Philosophy, 1992); Segun Gbadegesin, *African Philosophy: Traditional Yoruba Philosophy and Contemporary African Realities* (New York: Peter Lang, 1991); and Chukwudum Okolo, "The African Person: A Cultural Definition," in Coetzee. PH & MES van den Berg (eds.), *An Introduction to African Philosophy*, pp. 395-97 (Pretoria: Unisa Press, 1995).

124. In contrast, the dominant philosophical worldview of humanity in the West is based on the Cartesian belief *Cogito, ergo sum* [Latin for "I think, therefore I am"].

trapped in the false dichotomy posed between individualism and communitarianism."[125] Indeed, most African societies "function within a communal structure whereby a person's dignity and honour flow from his or her transcendental role as a cultural being."[126] As Fasil Nahum asserts, under African humanism individuality is not over-emphasized at the expense of collective rights.[127]

Although it is post-apartheid South Africa that popularized the concept (deployed as a mobilizing and unifying tool in its relatively young democracy), its roots and essence run deep in the cultural fabric of many African societies.[128] The origin of the term has been traced to ancient Egypt in the seven cardinal values of the Netchar Maat culture (i.e., truth, justice, propriety, harmony, balance, reciprocity and order).[129] Ogude and Dyer argue that the concept finds expression throughout Africa in the multitude of languages and cultures that enrich the continent.[130] There is a common misunderstanding that the philosophy of *Ubuntu* is exclusive to Bantu-speaking Africans. Most African cultures have a variant of the Zulu proverb, *Umuntu ng'umuntu ng'abantu.* The closest English

125. Rianna Oelofsen, "Women and Ubuntu: Does Ubuntu Condone the Subordination of Women?" in Jonathan Chimakonam and Louise du Toit (eds.), *African Philosophy and the Epistemic Marginalization of Women*, pp. 42-56 (New York: Routledge, 2018) at p. 45. Also see David Morrice, "The Liberal-Communitarian Debate in Contemporary Political Philosophy and its Significance for International Relations," *Review of International Studies* 26(2) (2000): 233-251.

126. Josiah Cobbah, "African Values and the Human Rights Debate: An African Perspective," *Human Rights Quarterly* 9(3) (1987): 309-331 at p. 331.

127. Quoted in Issa Shivji, *The Concept of Human Rights in Africa*, Note 2 at p. 14.

128. Several African philosophers had written about this African tradition prior to 1994. For example, see John Mbiti, *African religions and philosophy* (New York: Doubleday, 1970); Lucius Outlaw, "African 'philosophy': Deconstructive and reconstructive challenges," in Guttorm Fløistad, Dordrecht: and M. Nijhoff, (eds.), *African philosophy: A New Survey, Vol 5*, pp. 9-44 (Boston, MA: Martinus Nijhoff, 1987); Segun Gbadegesin, *African Philosophy: Traditional Yoruba Philosophy and Contemporary African Realities* (New York: Peter Lang, 1991); and Kwasi Wiredu and Kwame Gyekye (eds.), *Person and Community: Ghanaian Philosophical Studies* (Washington DC: The Council for Research in Values and Philosophy, 1992).

129. Maat was the Egyptian goddess who represented these ethical morals. See Johann Broodryk, *Understanding South Africa: The Ubuntu Way of Living* (Pretoria: Ubuntu School of Philosophy, 2008) at p. 45. Also see Siegfried Morenz, *Egyptian Religion* (translated by Ann Keep) (New York: Routledge, 2004).

130. See James Ogude and Unifier Dyer, "Utu/Ubuntu and Community Restoration: Narratives of Survivors in Kenya's 2007 Post-Election Violence," in James Ogude (ed.), *Ubuntu and the Reconstitution of Community*, pp. 206-226 (Bloomington: Indiana University Press, 2019).

translation would be: "to be a human being is to affirm one's humanity by recognizing the humanity of others and, on that basis, establish humane relations with them."[131] The noun *ntu* among Bantu-speakers simply means human, which is quite distinct from the ontological concept of *Ubuntu* that connotes deep, soul-force attachment to community and is a worldview understood beyond Bantu-speakers in most of Africa.[132]

Interdependence and compassion are the bedrock on which communities are built. The Baganda of Uganda refer to it as *Obuntu bulamu*, the Baluba of Central Africa as *Bumuntu*, the Shona of Zimbabwe as *Hunhu*, the Yoruba of Nigeria as *Iwapele* and, in Tanzania, it is embodied in the Kiswahili term *Ujamaa*.[133] When non-Bantu Senegalese leader Léopold Senghor said "I feel the other, I dance the other, and therefore I am," he was expressing the spirit of *Ubuntu*.[134] Indeed, the *Ubuntu* philosophy is reported by De Tejada to go "from the Nubian desert to the Cape of Good Hope and from Senegal to Zanzibar."[135] In his classic text *African Philosophy through Ubuntu*, Mogobe Ramose presents the concept of *Ubuntu* as the wellspring flowing with African ontology and epistemology.[136] As a philosophy, the ever-evolving system of *Ubuntu* values an individual within a larger context of the whole community. He argues that the concept informs the ideals and worldview of Black Africans beyond Bantu-speakers based on their deep belief of interrelatedness.[137]

Ubuntu can also be translated as the politics of the common good whereby the "collective pursuit of ends as shared by members of

131. Ibid. at p. 49.

132. Ibid. Also see Emmanuel Botlhale, "The Political Economy of Poverty Eradication in Botswana," *Poverty & Public Policy* 7(4) (2015): 406-419.

133. Mutumbo Nkulu-N'Sengha, "*Bumuntu* Paradigm and Gender Justice: Sexist and Anti-Sexist Trends in African Traditional Religions," in John Raines and Daniel Maguire (eds.), *What Men Owe to Women: Men's Voices from World Religions*, pp. 69-108 (Albany: University of New York Press, 2001).

134. Cited in Barbara Nussbaum, "African Culture and Ubuntu: Reflections of a South African in America," *Perspectives* 17(1) (2003): 1-12, at p. 4.

135. Francisco De Tejada, "The Future of Bantu Law," ARSP 11 (1979), Beiheft Neue Folge 304, Cited in Mogobe Ramose, "The philosophy of Ubuntu and Ubuntu as a Philosophy," in P. H. Coetzee and A. P. J. Roux (eds.), *Philosophy from Africa* (2nd ed.) pp. 230-238 (Cape Town, South Africa: Oxford Press, 2002) at p. 230.

136. Mogobe Ramose, *African Philosophy through Ubuntu* (Harare: Mond Books Publishers, 1999).

137. Ibid.

a community is the primary political aim."[138] Hence, most African societies view an individual as an inherently-communal being, embedded in social relationships. As Mwimnobi argues, "Communitarianism sees the community as a reality in itself and not as a mere association of individuals" and further elaborates that, "Community consciousness serves as a bedrock through which the individual realizes and fulfils himself or herself… In the African conception, a person is naturally a communitarian being who connotes both the social and political aspects of a human being."[139] While *Ubuntu* does not deny the importance of individuality, it lays a much heavier emphasis on the value of community. It values "unity in diversity."[140]

When we examine the jurisprudence of equality protection from around the continent, numerous contradictions and complexities arise from the fact that systemic domination is inscribed into the legal frameworks and institutions of our countries. The visionary constitutional aspirations of equality never translate into substantive equality on the ground. In particular, the Constitutional Court of South Africa has developed considerable equality jurisprudence based on dignity as the organizing principle.[141] However, the transformative power of dignity as the kingpin of equality has been questioned by many highlighting the limitation of the law in engendering transformative change.[142] Moreover, it makes little sense to speak of the value of dignity in isolation from its socio-cultural context. *Ubuntu* provides and crystalizes that context.

Nevertheless, some scholars have critiqued the foundational African legacies of communitarianism and humanism as nothing

138. Michael Onyebuchi Eze, "What is African Communitarianism? Against Consensus as a regulative ideal," *South African Journal of Philosophy*, 27(4) (2008): 386-399 at p. 389.

139. Odirachukwu Mwimnobi, "A Critical Exposition of Kwame Gyekye's Communitarianism," Master of Arts Thesis, University of South Africa, (November 2003), pp. 69-70, available at: https://core.ac.uk/download/pdf/43164658.pdf [accessed March 14, 2019].

140. See Rianna Oelofsen, "Women and Ubuntu", Note 125 at p. 43.

141. See Anne Smith, "Equality Constitutional Adjudication in South Africa," *African Human Rights Law Journal* 14 (2014): 609-632.

142. See Susie Cowen, "Can 'Dignity' Guide South Africa's Equality Jurisprudence?" *South African Journal on Human Rights* 17(1) (2001): 34-58.

more than an idealized view of Africa's past.[143] Criticizing the African understanding of the notion of equality, for example, Maria van den Berg contends:

> I argue that the legacies of African communalism, humanism and egalitarianism, as claimed by many eminent scholars, are founded on a mythologised and romanticised ideal of African societies and that African philosophers are trying to give a more substantial status to the communitarian ethos in modern Africa, when in terms of reality and as far as certain traditional human rights are concerned, it is merely a straw puppet.[144]

Such arguments largely miss the point, mostly because they misread the fundamental project of *Ubuntu* as a device for decolonizing and re-centring. As Oelofsen points out, *Ubuntu* "does not claim that there is an 'ideal African past' in which this was instantiated, just as there is no 'ideal European past' in which Kantian ethics was adhered to by all."[145]

Ubuntu is a *lived* experience. Clan systems and their organization, for example, are real and not a "mythologized ideal" in Africa. Many individualized Africans who have been fully integrated in the Western economy, including the author, remain uncomfortable and often conflicted. We live with one foot in modernity and the other in our rural roots.[146] This is evident in common practices such as the mixing of traditional norms with modern ones in marking social events such as birth, marriage and death.

For her part, Van den Berg challenges African male philosophers who claim that the African communitarian ethos accommodates

143. See e.g., Grivas M. Kayange, "Conceptual Analysis of Ubuntu/Umunthu and Meaning," in Grivas Kayange (ed.), *Meaning and Truth in African Philosophy: Doing African Philosophy with Language*, pp. 119-129 (Philosophical Studies Series, vol. 135. Springer Verlag, 2018); and Penny Enslin and Kai Horsthemke, "Can Ubuntu Provide a Model for Citizenship Education in African Democracies?" *Comparative Education* 40(4) (2004): 545–558.

144. Maria E. S. Van den Berg, "On a Communitarian Ethos, Equality and Human Rights in Africa," *Alternation* 6(1): 193-212 (1999) at p. 193.

145. Rianna Oelofsen, "Women and Ubuntu," Note 125 at p. 43.

146. Such conflict is often depicted in African literary works, most particularly the African Literature Series. E.g., see Chinua Achebe's *Things Fall Apart*, Camara Laye's *The African Child*, Elechi Amadi's *The Concubine*, Ngugi wa Thiong'o's *The River Between*, Wole Soyinka's *The Lion and the Jewel*, etc.

respect for the dignity and liberties of the individual. She ends by making a rather condescending request, asking them to "pause and consider whether the legacies of communitarianism, African humanism and egalitarianism which they hold so dear, would necessarily be a legacy that African women would unquestioningly embrace if they were given the opportunity to voice their analyses of these legacies?"[147] In fact, African women have long addressed the philosophical issues Van den Berg raises here.[148] In her 1994 article, "Gender Equality in a Dual-Sex System: The Case of Onitsha," Nkiru Nzegwu examined the concepualization of equality among the Igbo of Onitsha in Nigeria where sex differences were factored into an understanding of human value.[149] The sociopolitical system of Onitsha was structured along gender lines whereby women and men had their own governing councils to address their gender-based needs and to guide the development of their communities. Such a dual-sex system was starkly different from the Western configuration that Nzegwu terms the mono-sex system. Using documentary drama, Nzegwu interrogated the concept of "gender equality" as conceived by the Igbo. She employed an imaginary-but-based-on-reality dialogue between the historical-cultural characters of the Onitsha female leaders, Omu Nwagboka and Onyeamama, on the one hand, and Western feminists Simone de Beauvoir and Germaine Greer, on the other.

The critical and nuanced dialogue of Onitsha's female leaders clearly reveals "the complex ways cultural perspectives and world views shape people's conception of equality."[150] Nzegwu's analysis

147. Maria E. S. Van den Berg, "On a Communitarian Ethos, Note 144 at p. 208.

148. See, for example, Rosalyn Terborg-Penn and Andrea Benton Rushing (eds.), *Women in Africa and the African Diaspora* (Washington DC: Howard University Press, 1987); Ifi Amadiume, *Male Daughters, Female Husbands*, Note 66; Nkiru Nzegwu, "Gender Equality in Dual-Sex System: The Case of Onitsha," *Canadian Journal of Law and Jurisprudence* 7(1) (1994): 73-96; Catherine Acholonu, *Motherism: The Afrocentric Alternative to Feminism* (Owerri, Nigeria: Afa Publications, 1995); Morala Ogundipe, Interview with Desiree Lewis on the Interface of Politics, Culture and Education, *Feminist Africa*, 1 (2002): 132-145; Oyeronke Oyewumi, *The Invention of Women*, Note 66; Bibi Bakare-Yusuf, "Beyond Determinism: The Phenomenology of African Existence," *Feminist Africa* 2 (2003): 8-24; Nkiru Nzegwu, *Family Matters: Feminist Concepts in African Philosophy of Culture* (New York: State University of New York, 2006), pp. 158-197; and Jonathan Chimakonam and Louise du Toit (eds.), *African Philosophy and the Epistemic Marginalization of Women*, pp. 42-56 (New York: Routledge, 2018) at p. 43.

149. Nkiru Nzegwu, "Gender Equality in Dual-Sex System," Ibid.

150. Ibid. at p. 74.

is neither based on a romanticized understanding of Onitsha nor a nostalgic vision of femininity. She emphasizes the principle of comparable worth which implies that "women and men are complements, whose duties, though different, are socially comparable."[151] Hence, she rejects the notion of equality as "equivalence" or sameness which, according to her, "obscures the fact that it is only at a minimum trivial level that everybody is equal." It also misses that "*what counts as equality depends on the character of the institutional structures and the value assigned to both sexes*" [emphasis supplied].[152]

Nzegwu's analysis would explain why many African women use the analogy of the five fingers of the hand in rejection of the notion of "equality as equivalence." She urges us to unwed our conceptual thinking from Western social ideals, particularly the emphasis on individualism, and begin viewing our Indigenous cultures as legitimate analytical frameworks. Rather than fight *for* "gender equality" it makes more sense to struggle *against* those institutions and structures that engender women's subjugation, diminish their status and denigrate their gender roles. Our traditions equip us with useful tools that we can use to achieve gender justice; *Ubuntu* is simply one of them. Its moral and ethical foundation requires one to respect others if one is to respect him or herself; it also calls for respect for human dignity—all being core goals for Afro-Feminism.[153] Its high regard for relationships is key to foster and nurture healthy and holistic characters. And as Oelofsen concludes, "Afro-communitarian understandings of personhood and ethics, in principle, would not condone the subordination and oppression of women."[154]

The danger of evaluating African cultures on the bases and categories of Western value schemes, argues Nzegwu, is that the latter is given epistemic preeminence. For example, "polygamy is equated to patriarchy; patrilineality evidences patriarchy; and women's refusal to seek inclusion in male associations and

151. Ibid. at p. 85

152. Ibid. at p. 84.

153. Rianna Oelofsen, "Women and Ubuntu," Note 125 at p. 47.

154. Ibid. at p. 54.

structures reflects subordination."[155] It is crucial to move away from "the dichotomous evaluation of women's identity in diametrical opposition to a man's that occurs in Western studies."[156] A historical and nuanced understanding of these African traditional practices would reveal their original value and their subsequent pollution and corruption by colonialism and foreign religions, as well as deliberate negative portrayals and misrepresentations.[157] Often times, traditional value systems were not based on such dichotomous outcomes and visions of reality.

In order to fully understand the nuanced precolonial gender relations in traditional African societies we have to adopt analytical tools that are much more refined and perceptive. For instance, although African women had to defer to men in many respects, they were weighted equally with men *as* human beings. It was not uncommon to also find men deferring to women in other respects, say their mothers, mothers-in-law and even their wives. Women also wielded considerable power in various African traditional and spiritual rituals related to birth, marriage, last funeral rites, twin-celebration ceremonies and succession. Hence, the persistent depiction of African women exclusively as victims is a misrepresentation perpetuated by Western narratives. Additionally, despite the vertical social relations, African societies were unified by mythological beliefs that tied them to their ancestors and ensured social justice.[158] Social regulation was not through law as we know it in the Eurocentric sense, but through other social mechanisms. Such regulation was mediated through clan systems based on totemism, whereby clan members were believed to have kinship or mystical relationships with spirit-beings such as an animal, fish or plant.

All this opens our imagination to the possibilities of doing afro-feminism and being feminists in Africa. Obviously, we cannot

155. Nkiru Nzegwu, "Gender Equality in Dual-Sex System," Note 148 at p. 91.

156. Morala Ogundipe, "Interview with Desiree Lewis," Note 148, at p. 136.

157. See Everlyn Nicodemus, "Who Owns Third World Women's Knowledge? An Experience," *Economic and Political Weekly*, 21(28) (Jul. 12, 1986): 1197-1201; and John Ogbu, "African Bridewealth and Women's Status," *American Ethnologist* 5(2) (1978): 241-262.

158. Kéba M'Baye, "Organisation de L'Unité Africaine," *Les Dimensions Internationales des Droits de L'Homme,* Paris, UNESCO (1978): 650-51.

generalize the Onitsha Dual-Sex political system to the entire continent. Indeed, its conceptual basis has stirred up considerable controversy, indicted for its essentialism and privileging motherhood as a central defining force for African women.[159] But what it clearly demonstrates is that, as part of the decolonial feminist project, Africa must begin to examine itself and theorize its gender relations through fresh prisms and ontological frameworks; to employ the tool of *Ubuntu* as a mechanism for vigourously engaging with life questions.[160] *Ubuntu* provides the basis on which to adopt principles of justice that give more weight to the wellbeing of the group than the individual in the logic of coloniality.

Van den Berg asks if African women would embrace the legacies of *Ubuntu*. There is no doubt that the Afro-moral traditions encoded in the relational ethic of *Ubuntu* carry additional potential and promise to address African women's subordination and oppression. In other words, the core values of communitarianism, humanness and egalitarianism enshrined in *Ubuntu* can be strategically deployed to operationalize gender justice, albeit after a careful interrogation and historicization of the concept itself. We can certainly retrace, revitalize and repurpose those critical values that carry the potential for making our humanity wholesome and meaningful. In the same way that scholars have used *Ubuntu* as a foundational moral theory and methodology to account for justice in the theorization and practice of areas such as the media, education and even business, so too can it be adopted in Afro-Feminism.

Given the above, the epistemological and conceptual idealism of the *Ubuntu* philosophy can be carefully and successfully tapped into in the journey to heightening people's awareness of gender justice. Just as gender equality is an ideal that we aspire to, the concept of *Ubuntu* is an ideal that can take us a step closer to that aspiration.

159. See e.g., Bibi Bakare-Yusuf, "Beyond Determinism" Note 148; and Patricia McFadden, "The Challenges and Prospects for the African Women's Movement in the 21st Century," *Women in Action*, 1 (1997), available at: http://www.hartford-hwp.com/archives/30/152.html [accessed October 10, 2019].

160. Jonathan Chimakonam, "Addressing the Epistemic Marginalization of Women in African Philosophy and Building a Culture of Conversations," in Jonathan Chimakonam and Louise du Toit (eds.), *African Philosophy and the Epistemic Marginalization of Women*, pp. 8-21 (New York: Routledge, 2018) at p. 8.

Gender justice or the respect for women's personhood and dignity can be accommodated within the ethos of communitarianism. Instead of waving the Bill of Rights or CEDAW for ordinary *wananchi* when discussing justice for women, couching the values in familiar Indigenous terms that emphasize, for example, the fact that when you humiliate and diminish a woman (or a man for that matter), you are also diminished as part of the greater whole. The former has no cognitive anchoring effect for *wananchi*, while the latter is a potentially powerful heuristic method for generating results. The former is transmitted as a top-down process, while the latter is a bottom-up approach via familiar activities such as storytelling, public narrative, singing, dancing, drama performances, praise poetry and other grassroots activities at the local levels.

To elaborate the point about transmitting the values of *Ubuntu* through story is seen in the following tale: A White anthropologist proposed a game to children in an African village. He put a basket full of mangoes near a tree and told the children to participate in a race, promising whoever got to the basket first to take it as their own and enjoy the fruits. When he told them to start running, the children held each other's hands and ran together and then sat and enjoyed the mangoes together. When the anthropologist asked them why they had run like that instead of competing for the winner to enjoy all the fruits alone, they responded: "*UBUNTU*, how can one of us be happy if all the others are sad?"[161] Obviously, this story should not be interpreted literally but as an allegory; its value is to deliver a broader moral/philosophical message, an extended metaphor for Afro-communitarianism. The worldview of competition extols individualism while the other reflects communitarianism and mutual support. Allegories like this one convey *Ubuntu* values and shape children's perspectives about social relations, constructing a counter-hegemonic discourse in the process. Indeed, proverbs, idioms, riddles, praise names, folksongs and folktales constituted the "encyclopedia" of *Ubuntu*. African cultural institutions, such as "extended family" networks, have in-built support systems which were integral to their ways of being

161. See video at: https://youtu.be/DEVGN6o6fzw [accessed December 14, 2019].

and doing. *Ubuntu* can help us develop a normative standard of well-being based on the maxim, "I am because we are" rather than the ubiquitous Western Cartesian understanding of "I think, therefore I am."

Let me be clear, although the ideology of *Ubuntu* is a normative value system that our ancestors practised and lived, many of its fundamental aspects live on to date. I have personally seen and experienced the spirit of *Ubuntu* throughout my life, most forcefully in rural Africa. Far from being a "romanticized ideal," wherever I go in the rural parts of any African country I witness it first-hand, from Egypt to South Africa and Senegal to Ethiopia. At the risk of sounding essentialist, in general and relatively speaking, I find that rural folk are the true philanthropists of this world for, despite their limited resources, they are usually willing to share. Their *Ubuntu* is exhibited in myriad ways; from their heartfelt hospitality to their unfettered generosity towards a total stranger, to their utter shock at many of the Westernized ways of being. Terms such as *omuzungu si muntu* (Luganda for a White person is not a person) have become common parlance among rural *wananchi* to describe a Westernized individual whose actions are inimical to *Ubuntu*. By no means is such coinage a term of abuse, but rather, it simply reflects their astonishment at the un-*Ubuntu* behaviour exhibited by many White people.

Instructively, they also refer to Westernized Africans—such as those who live in fenced-off and gated residences—as *omuzungu*. That language reflects both the assault of *Ubuntu* by capitalism and its rejection by rural folk. The complex historical contradictions and hierarchies that existed and continue to exist in African societies developed *despite* the philosophy of *Ubuntu*. They are mostly rooted in the material structures of capitalist political economies. For example, it is hard to believe that, for centuries, the diverse clans in Somalia lived in relative harmony before the prolonged vicious conflict that has torn the country apart. Somali scholars Afyare Elmi and Abdullahi Barise squarely place the background causes of these conflicts in "competition for resources and power, repression by the military regime and the colonial legacy."[162] And yet it is well known

162. Afyare Abdi Elmi and Abdullahi Barise, "The Somali Conflict: Root Causes, Obstacles, and Peace-Building Strategies," *African Security Studies*, 15(1) (2006): 32-54 at p. 36.

that prior to colonialism, traditional legal systems (*Heer*) effectively resolved clashes over resources such as water, livestock and land.[163]

Leonhard Praeg characterizes the deeply complex and multidimensional concept of *Ubuntu* as "critical humanism," highlighting its political connotation.[164] Colonization and "modernity" conspired to corrupt Africa's history and its very conception of humanity.[165] Praeg reminds us that *Ubuntu* must always be conceived of as transcendent, representing possibilities for and about our humanity. Hence, beyond instilling the values of *Ubuntu* in *wananchi,* we must address the structural foundations or the political economy of gender inequality. Indeed, Praeg's conceptualization of *Ubuntu* prioritizes "the relations of power that systematically exclude certain people from being considered human in the first instance."[166] The entire philosophy of *Ubuntu* is espoused as a contradistinction to *laissez-faire* capitalism and economic liberalism which undergird the oppressive status quo.

It would be useful to tap into that conceptual framework and emphasize the idea of *Ubuntu* as opposed to that of "equality." Eze counsels that if the African communitarian ethos is to make sense in Western philosophical discourse, it is necessary to adopt a "realist perspectivism" which strives for the conversion of beliefs instead of the illusive prospect of conformity.[167] This perspective is more realistic than consensus. "Conversion of beliefs" can be achieved through constructing a counter-hegemonic discourse, one that challenges the dominant ideologies (i.e., beliefs, assumptions and values) of sexism, racism and all the other isms.[168] The ideology

163. Ibid. at p. 33.

164. Praeg distinguishes traditional Western humanism from critical humanism in that "the central focus of critical humanism is not simply the human… the 'human' is a secondary concept [whereby] a more fundamental or primary concern is with the relations of power that systematically exclude certain people from being considered human in the first instance." Leonhard Praeg, *A Report on Ubuntu* (Pietermaritzburg: University of Kwazulu-Natal Press, 2014) at p. 12.

165. Ibid. at p. 8.

166. Ibid. at p. 12.

167. Michael Onyebuchi Eze, "What is African Communitarianism? Against Consensus as a regulative ideal," *South African Journal of Philosophy* 27(4) (2008): 386-399 at p. 387.

168. Karl Marx developed the theory of ideology whereby he convincingly argued that the production of ideas, conceptions and consciousness that are conceived and believed by the people reflects the interests of the ruling class. Later, Antonio Gramsci adopted the Marxist idea of dominant ideology to argue that cultural hegemony is achieved

of *Ubuntu*—and in particular its communitarianism—is not unfamiliar to many Africans and can act as a springboard for launching counter-narratives regarding gender hierarchies. As a familiar epistemological paradigm, it can be used to appeal to their sense of justice and empathy. It is a unifying motif to address inequities and violations in our societies. At the core of African struggles for liberation against colonialism and neocolonialism were calls for social justice, fairness and dignity—all of which are embodied in *Ubuntu* philosophy. Is it possible for us, as African feminists, to adopt these Indigenous values in our advocacy for dismantling gender inequities? Instead of talking about the alien concept of "gender equality" let us talk about *Ubuntu* for women, *Ubuntu* for all.

By invoking the framework of *Ubuntu*, we can advocate against issues such as state repression, gender-based violence, the expropriation of women's sexuality and reproductive capacities, property inheritance and the exploitation of their domestic labour. Such a transformative framework can be deployed to dismantle the social framework structured on reductionist assumptions which contend that nature is destiny. It would challenge the reasoning that as bearers of children, women must not only be their rearers, but also make their "commodified" bodies readily available for men's sexual gratification. The reconceptualized concept of equality would be based not in law but in actual experiences of subordinates where domestic work would cease to be "privatized" and undervalued, female bodies cease to be objectified and sexualized and untethered from male control.

Through *Ubuntu*, values such as respect for human dignity, humaneness, compassion and mutual deference can be edified. Women can be reconstructed as holistic human beings imbued with agency. The best method to achieve this is through conscientization of the type advocated by the Brazilian theorist Paulo Freire.[169] Using his methodology, the consciousness of *Ubuntu* can be awakened among *wananchi.* Freire's methodology helps to deepen "awareness

through the spread of ideologies by social institutions (e.g., law, media, religion, educational, etc.) and making them appear natural and inevitable.

169. See Paulo Freire, *Pedagogy of the Oppressed*, trans. Myra B. Ramos (New York: Herder and Herder, 1970).

both of the socio-cultural reality which shapes their lives and of their capacity to transform that reality."[170] This, he asserts, is achieved through a combination of intellectual effort and "praxis"—the unity of reflection and action, i.e., being aware of the reasons behind what you do.[171] This process is important as it allows for contextual sensitivity and the eventual decolonizing of the mind. It facilitates the transformation of tendencies and practices which foster injustice and inequality. Thus, conscientization is an effective vehicle for developing new perceptions and worldviews. It allows learners to interface Indigenous knowledge systems (e.g., story-telling, song, lamentation and dance) with modern systems; connect with traditional concepts of justice and conflict resolution and management under the *Ubuntu* paradigm.[172]

Adopting the term "Africana womanism" to distinguish African women's struggles for liberation from dominant Western feminist struggles, Clenora Hudson-Weems correctly observes that "the framework for a world free of oppression already exists within the traditional African philosophical world view – if only the Africana woman will claim it."[173] Indeed, tapping into the various centres of knowledge and dialogue may lead to richer experiences for African women, one that embraces the model of different-by-equal-complementarity instead of "gender equality." Such expression endorses the *Ubuntu* philosophy of humaneness and interconnectedness.

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170. Paulo Freire, "Cultural Action for Freedom," *Harvard Educational Review*, Monograph Series No. 1 (1970) at p. 27.

171. Paulo Freire, *Pedagogy of freedom: Ethics, Democracy, and Civic Courage*, trans. P. Clarke, (Lanham: Rowman & Littlefield Publishers, 1998) at p. 107.

172. Chinwe Ezeifeka and Ifeyinwa Ogbazi, "Feminist Undercurrents in Selected Traditional Igbo Songs: Contemporary Igbo Women's Voice," *Studies in Literature and Language* 12(5) (2016): 1-15.

173. Clenora Hudson-Weems, "Africana Womanism: An Overview," in Dolores Aldridge and Clarence Young (eds.), *Out of the Revolution: The Development of Africana Studies*, pp. 205-217 (New York: Lexington Books, 2000) at p. 208. Hudson-Weems explains that the term 'Africana' acknowledges the diasporic presence of African women outside the continent. See Pamela Yaa Asantewaa Reed, "Africana Womanism and African Feminism: A Philosophical, Literary, and Cosmological Dialectic on Family," *The Western Journal of Black Studies* 25(3): 168-176 (2001) at p. 169. Another term that has been suggested by Molara Ogundipe-Leslie is 'Stiwanism'—Social Transformation Including Women in Africa—see *Recreating Ourselves: African Women and Critical Transformations* (Trenton, NJ: Africa World Press, 1994).

7

Rethinking the African Academy

The most potent weapon in the hands of the oppressor is the mind of the oppressed.
—Steve Biko[1]

Universities in Africa represent the example *par excellence* of the continued sustenance of the colonial project. True to its root meaning, the Latin term *universitas* implies a universal academe meant to universalize and hegemonize knowledge through coloniality.[2] Hence, the African decolonization/decolonial project must pay particular attention to the education sector in order to seize back the minds of its people. The Academy has been described as "the epicenter of colonial hegemony, indoctrination, and mental colonization."[3] Frantz Fanon told us that decolonizing the mind was the first step towards dismantling imperialism and wrestling

1. Steve Biko, *I Write What I like* (Randburg: Raven Press, 1996) at p. 68.

2. See Carol Sicherman, *Becoming an African University: Makerere 1922-2000* (Trenton, NJ: Africa World Press, 2005).

3. Edward Shizha, "Rethinking and Reconstituting Indigenous Knowledge and Voices in the Academy in Zimbabwe: A Decolonization Process," in Dip Kapoor & Edward Shiza (eds.), *Indigenous Knowledge and Learning in Asia/Pacific and Africa*, pp. 115-129 (New York: Palgrave Macmillan, 2010) at p. 115; also see Wanelisa Xaba, "Challenging Fanon: A Black Radical Feminist Perspective on Violence and the Fees Must Fall Movement," *Agenda* 31(3-4) (2017): 96-104.

knowledge management out of its purview. Hence, it was not by accident that the colonialist Cecil Rhodes left a substantial portion of his estate to funding higher education globally. The Rhodes Trust continues to exist and operate more than a century after his death.[4] It was fully understood by Rhodes that, as institutions where specific kinds of knowledge are produced, validated and delivered, the Academy held the key to exercising control and domination.

When people talk about decolonizing the Academy, the focus is usually placed on transforming the curricula and/or replacing White faces with Black ones. But this constitutes only a small fraction of the complex decolonization/decolonial process. When you realize that not only has colonization been ongoing for the past three centuries, but also that it has been running smoothly and efficiently for most of that period, you quickly appreciate the enormity of unhinging its structural and ideological legacies.

This chapter opens with a brief general history of the African academe, tracing its evolution as a colonial relic to its current challenges under neoliberalism. I argue that there are at least five layers or sub-systems of colonization that need to be peeled away from African Academies to realize effective decolonization and decolonial praxis. Those five layers lie on a potent kernel (or software) which is the engine that pumps fuel into the veins of the layers. That kernel is called *internalized colonialism*. Hence, the next section of this chapter discusses the manner in which internalized colonialism operates within African Academies, creating blind spots for a full-scale decolonization/decolonial assault.

The final section of the chapter tackles the five layers of colonization that Africa has to painstakingly peel away to rid itself of coloniality in its institutions of higher learning. Each of these layers has critical gender implications which will also be examined. The first layer consists of the institutional ethos, that is, the fundamental character and culture of the university. Does that culture perpetuate colonial hegemony or does it deliberately invalidate it? Does it give space and preeminence to colonial legacies or does it validate Indigenous and alternative worldviews? Layer two unpacks the content of the curricula while the third layer

4. See George Walker, "'So Much to Do': Oxford and the Wills of Cecil Rhodes," *The Journal of Imperial and Commonwealth History* 44(4) (2016): 697-716.

accounts for the pedagogical approaches which are deployed in the Academy. Do these work to keep colonialism alive or do they promote critical learning and reflexive practice? The fourth layer is composed of research politics and questions the ontological and epistemological assumptions of dominant Eurocentric discourses. The final outermost layer represents inclusiveness of diversities. Do the demographics of students, staff and administrators, as well as the policies at our institutions of higher learning reflect equitable and inclusive practices? And beyond the numbers, what is the quality of life of the people in those statistics? I argue that peeling away one layer while leaving the others intact results in a truncated and ineffective decolonization/decolonial process. However, as a precondition to peeling away the layers, the workings of the core must first be exposed.

History and Evolution of African Academies

There is a strong public perception that formal education—particularly higher forms of learning on the African continent—was introduced by colonialism. The fact is that such forms of learning predate colonialism.[5] The imperialist project deliberately destroyed the continent's academic traditions, essentially reducing higher education to an artifact of its imperialistic policies. Damtew Teferra and Philip Altbach note that "higher education in Africa is as old as the pyramids of Egypt, the obelisks of Ethiopia, and the Kingdom of Timbuktu. The oldest university still existing in the world is Egypt's Al-Azhar, founded as and still the major seat of Islamic learning."[6] The ancient University of Sankoré located in Timbuktu (present day Mali) was founded in 989 AD. The northern and western regions of Africa were largely exposed to Islamic education for millennia before European imperialists set foot on the continent.[7]

5. Damtew Teferra and Philip Altbach, "Trends and Perspectives in African Higher Education," in Damtew Teferra and Philip Altbach (eds.), *African Higher Education: An International Reference Handbook*, pp. 3-14 (Bloomington: Indiana University Press, 2003).

6. Ibid. at p. 23.

7. Ousmane Oumar Kane, *Beyond Timbuktu: An Intellectual History of Muslim West Africa* (Cambridge: Harvard University Press, 2016).

Ousmane Kane provides an excellent survey of historical documentations of Islamic and African intellectual works (*The Timbuktu Studies*) that were produced in West Africa during the pre-colonial period.[8] He notes that, "The development of Islamic scholarship was a process that paralleled the spread of Islam."[9] By the eleventh century several madrasa colleges—equivalent to law schools—had been established in northern Africa, most notable among them the College of Qayrawan.[10] Today, coloniality and Islamophobia have tarred madrasa schools with the brush of "terrorism," depicted as fertile training ground for Muslim extremists. Although fewer women than men participated in higher education and research in these early institutions, quite a few excelled in the different disciplines. The most cited example is the case of mathematician, philosopher, astronomer and teacher Hypatia (c. 350–370) who lived in Alexandria, Egypt.[11] In 1980 the Society for Women in Philosophy (SWIP) in the U.S.A. decided to name their pluralist radical journal of feminist philosophy after her.[12]

The development of medieval higher education in central, eastern and southern Africa is not as well documented as that of north and west Africa. What is clear is that the recorded historical trajectory of modern higher education in these regions largely responded to colonial economic and administrative needs.[13] Initially, when the European imperialists arrived in the nineteenth century they did not care to expose "natives" to higher education for fear that it would plant seeds of disaffection and revolt among them.[14] Post-secondary education in most countries was introduced

8. Ibid. in Ch 1.

9. Ibid. at p. 44.

10. Ibid. at p. 45.

11. See Michael A. B. Deakin, "Hypatia and Her Mathematics," *The American Mathematical Monthly* 101(3) (1994): 234-243; and L. Cameron, "Isidore of Miletus and Hypatia of Alexandria: On the Editing of Mathematical Texts," *Greek, Roman and Byzantine Studies* 31 (1990): 103-127.

12. See Lori Gruen and Alison Wylie, "Feminist Legacies/Feminist Futures: 25th Anniversary Special Issue—Editors' Introduction," *Hypatia* 25(4) (2010): 725-732.

13. L.P. Tembo, P.L. Pitso, M.D. El Khalifa, P.M. Makhurane and Makhonnen Dilgassa (eds.), *The Development of Higher Education in Eastern and Southern Africa* (Nairobi: Hedaya Educational Books Ltd., 1985).

14. Carol Sicherman, *Becoming an African University*, Note 2.

in the first half of the twentieth century in the shape of technical schools/colleges teaching artisan skills such as technical drawing, pottery, carpentry and elementary mechanical engineering. For example, the British Standing Advisory Committee on Native Education appointed by the British Secretary of State for the Colonies in 1923 emphasized vocational education that would build, not the intellectual capacities of the "natives" but "habits of industry, of truthfulness, of *manliness*." [emphasis supplied][15] Clearly, it was men, not women, that colonialists intended to populate these half-baked universities. They also needed people to fill the positions of government clerks, guards, bank tellers and medical orderlies.[16] Prior to flag independence, countries such as Malawi had no universities and all 33 graduates who existed at the time of independence received their education from universities outside the country.[17]

When academic education was finally established in most of these countries, it was linked to universities in the metropoles which would guarantee the "gold standard" of education.[18] Women were largely excluded from higher education. To be sure, when Makerere University opened as a technical college in 1922, it adopted a brand new motto: "In all things let us be men."[19] The maxim reflected the gendered character of these institutions which has persisted to this day, despite dislodging the original motto and replacing it with *Pro futuro unum* (We Build for the Future). Makerere University exclusively admitted men until 1945 when it admitted six women.[20] One of the pioneer women at the institution—Dr. Sarah Ntiro—was admitted to pursue

15. Ibid. at p. 10.

16. B. Onyango, The Historical Development of Higher Education: Uganda," in L.P. Tembo *et al*, *The Development of Higher Education*, Note 13, pp. 128-136.

17. W.E.S. Mvalo and P.R. Lungu, "The Historical Development of Higher Education: Malawi," in L.P. Tembo *et al*, *The Development of Higher Education*, Note 13, pp. 47-70.

18. For example, in 1949 Makerere University entered into a special relationship with the University of London, offering courses that would lead to external degrees. See S.E. Migot-Adholla, "The Development of Higher Education in Eastern and Southern Africa: Kenya," in L.P. Tembo *et al*., *The Development of Higher Education*, Note 13, pp. 1-26.

19. Margaret Macpherson, *They Built for the Future: A Chronicle of Makerere University College, 1922-1962*, (Cambridge: Cambridge University Press, 1964) at p. 14.

20. Ibid.

mathematics only to be chased out of her first class by the White professor who made it clear that women had no business in his class by walking out of the lecture room in protest. Ntiro had to abandon mathematics for this reason, eventually graduating in history and even pursuing post-graduate studies at Oxford University.[21]

In the aftermath of independence, new universities were established and old ones expanded to meet the needs of Africa's development. At these institutions, critical scholars sparked off debates about decolonizing university curricula in Africa from the late 1960s and early 1970s.[22] Such deliberations raged on through the 1980s.[23] However, investments in African universities were brought to a sudden halt after the neoliberal development structural adjustment policies (SAPs) were unleashed on the continent by global financial institutions such as the World Bank and the IMF.[24] Economies were liberalized, accompanied by the deployment of free market policies prioritizing deregulation, privatization, downsizing public services, cost-sharing and the reduction of subsidies. The institutionalization of the market model of economic growth had terribly adverse effects at the microeconomic and human levels, including within the higher education sector. Such policies crippled African Academies, making the 1990s an extremely difficult decade for higher education on the continent. In particular, SAPs led to academic and non-academic staff layoffs; cuts in government subventions; abolition of government scholarships and allowances; the introduction of "user fees" for students, and so

21. See Winnie Byanyima and Richard Mugisha (eds.), *A Rising Tide: Ugandan Women's Struggle for a Public Voice 1940-2004* (Kampala: Forum for Women in Democracy, 2005).

22. Peter Crossman, "Perceptions of 'Africanization' or 'Endogenisation' at African Universities: Issues and Recommendations," in Paul Zeleza and Adebayo Olukoshi (eds.), *African Universities in the Twenty-First Century*, Vol. 2, pp. 319-340 (Dakar, Senegal: CODESRIA, 2004).

23. See e.g., Richard Bisell and Michael Radu (eds.), *Africa in the Post-Decolonization Era* (London: Transaction Books, 1984); David Gardinier, "Education in French Equatorial Africa," *Cultures et développement* 16(2) (1984): 303-334; and Josaphat B. Kubayanda, "On Discourse of Decolonization in Africa and the Caribbean," *Dispositio* 14(36/38) (1989): 25-37.

24. See Charmaine Pereira, "Reflections of a Feminist Scholar-Activist in Nigeria," in Akosua Adomako Ampofo and Signe Arnfred (eds.), *African Feminist Politics of Knowledge: Tensions, Challenges, Possibilities*, pp. 83-110 (Uppsala: Nordiska Afrikainstitutet, 2009).

forth. African higher education was forced to fight for its very survival.

Inevitably these measures sparked off hundreds of student anti-austerity protests all over the continent. In Nigeria, Kole Shettima argues that the students' movement led by the National Association of Nigerian Students (NANS) was the most effective in challenging the neoliberal policies that entrenched the market ethos in that country.[25] Ferocious agitation also took place in 1992 in Côte d'Ivoire when students joined hands with other social forces to challenge SAP-related cuts.[26] In what Frederick Byaruhanga characterizes as "survival activism," students at Makerere University also staged protests against government abolition and cuts in allowances.[27] Most of these protests culminated in violent state repression, violence and even student deaths. Many universities were closed down from Senegal to Sudan, Benin to Madagascar.[28] Faculty members also became the target of repressive regimes as academic freedom was eroded.[29]

Feminist scholar Charmaine Pereira, who was teaching at Ahmadu Bello University, recalls: "One of the consequences of the destabilisation of the university system in Nigeria is that many former university lecturers—I count myself among them—now choose to work outside the system, since our experiences within have proved tremendously hostile to research and innovation in general."[30] At the end of the day, all these extremes led to a severe "brain drain" as academics left the arena to better remunerated positions in the private sector or outside the continent. In order to survive, many Academies adopted a business-like orientation, a trend which continues to date.[31]

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25. Kole Ahmed Shettima, "Structural Adjustment and the Student Movement in Nigeria," *Review of African Political Economy* 56 (1993): 83-91.

26. John Nkinyangi, "Student Protests in Sub-Saharan Africa," *Higher Education* 22(2) (1991): 157-173.

27. Frederick Byaruhanga, *Student Power in Africa's Higher Education: A Case of Makerere University* (New York: Routledge, 2006).

28. Ibid.

29. For an example of a close-up account of such repression see Malawian Professor Jack Mapanje's powerful prison memoir, *And Crocodiles are Hungry at Night* (London: Ayebia Clarke Publishing, 2011).

30. Charmaine Pereira, "Reflections of a Feminist Scholar," Note 24 at p. 86.

31. Teresa Barnes, "Politics of the Mind and Body: Gender and Institutional Culture in

The contentious politics of higher education sparked by neoliberal transformations continue to rage today. Perhaps the most explosive of student protests in recent history have been the South African students' protests that gained momentum in March 2015, culminating in the "fallist" movements under the hashtags #RhodesMustFall and #FeesMustFall. These protests were squarely at the centre of the contemporary debates about decolonization on the continent.[32] Those movements challenged institutional racism and classism within the Academy and beyond.[33] These growing rumblings and unrest among post-colonials have been a source of anxiety to the colonizers and their agents who started appropriating the language of decolonization.[34] However, for the colonizers, decolonization is cosmetic, steeped in liberal understandings of power and democracy; it is prone to ignoring decoloniality. But the current times—when globalization and the immigration of thousands of Africans is driving seismic shifts in global politics—call for a new urgency to this Afro-centric project.

Regionalization in higher education was a phenomenon of colonial times as it was not uncommon for one university to serve an entire region. Examples include Makerere University which served several east and central African countries and the University College of Fort Hare where many students from southern Africa went.[35] Today we continue to see in it in regional bodies such as the Association of African Universities (AAU), the Association for the Development of Education in Africa (ADEA), the Inter-University

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African Universities," *Feminist Africa* 8 (2007): 8-25. Also see Mahmood Mamdani, *Scholars in the Marketplace: The Dilemmas of Neo-Liberal Reform at Makerere University, 1989-2005* (Kampala: Fountain Publishers, 2007); Gerald Wangenge-Ouma, "Globalisation and Higher Education Funding Policy Shifts in Kenya," *Journal of Higher Education Policy and Management* 30(3) (2008): 215-229; Kabiru Kinyanjui, "African education: Dilemmas, challenges and opportunities," in U. Himmelstrand, K. Kinyanjui and E. Mburugu (eds.), *African perspectives on development*, pp. 280-295 (New York: St. Martin's Press, 1994).

32. See Francis Nyamnjoh, *#RhodesMustFall: Nibbling at Resilient Colonialism in South Africa* (Mankon, Cameroon: Langaa Research & Publishing, 2016).

33. Anye Nyamnjoh, "The Phenomenology of *Rhodes Must Fall*: Student Activism and the Experience of Alienation at the University of Cape Town," *Strategic Review for Southern Africa* 39(1) (2017): 256-277.

34. See William Mpofu, "Coloniality in the Scramble for African Knowledge: A Decolonial Political Perspective," *Africanus* 43(2) (2013): 105-117.

35. See W.E.S. Mvalo and P.R. Lungu, "The Historical Development of Higher Education," Note 17.

Council for Eastern Africa (IUCEA), the Southern African Regional Universities Association (SARUA), and the African Virtual University (AVU). The aim is to "seek common strategies to address educational challenges in Africa particularly in access, equity, capacity building, and quality assurance."[36] In reality, such bodies abet, if unwittingly, the reproduction of colonial policies in higher education regarding curricula, pedagogy and evaluation. All of them are guided by colonial ontological and epistemological frameworks that lend authority to modernity, not prioritizing Africanity. The pertinent issues regarding the coloniality of African Academies, let alone gender inequality, do not appear on the strategic priority lists of national implementers or even for the AAU. The principal management organs of the AAU are overwhelmingly dominated by men. Out of the 13 Governing Board Members (2017-2021), only one is a woman.[37] Some of the other lasting and most devastating colonial legacies to African higher education include: the erasure or devaluation of African knowledges and knowledge systems; being insular, elitist and exclusionary; being steeped in an incredibly masculinist and patriarchal culture; having highly bureaucratic management systems and bottom heavy with non-academic staff; and tight state regulation and/or influence.[38] The 54 countries on the continent with a combined population of approximately 1.2 billion people, boast of approximately 1,000 universities.[39] Compare this to the United States of America with a population of 327.2 million and over 4,300 universities.[40]

Institutions of higher learning significantly constitute what

36. Chika Sehoole and Hans de Wit, "The Regionalisation, Internationalisation, and Globalisation of African Higher Education," *International Journal of African Higher Education* 1(1) (2014): 217-41 at p. 221.

37. Prof. Theresia Nkuo-Akenji, Vice-Chancellor of the University of Bamenda in Cameroon is the sole woman on this Board. See AAU Governance Structure, available at: https://www.aau.org/governance/ [accessed November 11, 2019].

38. Ibid.

39. See Association of African Universities (AAU) *Strategic Plan - 2016-2020*, (Aug 2016), available at: https://www.aau.org/wp-content/uploads/sites/9/2016/10/AAU-STRATEGIC-PLAN-2016-2020-FINAL.pdf [accessed November 11, 2019] at p. 22.

40. Josh Moody, "A Guide to the Changing Number of U.S. Universities," *US News*, (February 15, 2019), citing figures from the National Center for Education Statistics. Available at: https://www.usnews.com/education/best-colleges/articles/2019-02-15/how-many-universities-are-in-the-us-and-why-that-number-is-changing [accessed November 11, 2019].

Coombe describes as the "national storehouses of trained, informed, inquiring and critical intellects, and the indispensable means of replenishing national talent."[41] In short, they represent power. This means that women who find their way into these institutions have to grapple with different forms of power, including patriarchy, internal colonialism, heteronormativity, classism and so forth. Out of all the bases of structural inequalities (including social class, ethnicity, spatial location), gender is the most widespread and persistent basis for inequalities in the African higher education sector.[42]

With this brief history it stands to repeat the point that educational institutions were directly implicated in the processes of inculcating colonial ideologies and discourses into the colonized "native." Decoloniality, which is the focus of this chapter, involves the conscious resistance to internalized colonial structures of thought. It is designed to reject essentialization, stereotypes and biases of colonial-dominated hegemonies. The decolonial project is about social justice but it is quite distinct from the human rights project (e.g., the right to education for all). While both projects seek social change, the decolonial project recognizes that the historical basis of the human rights project lies in the dominant colonial ideology that it is challenging. Decoloniality calls for social transformation that is more disruptive than the minimalist quest for human rights. While the human rights project comes from a Western liberal ethic, the project of decoloniality recognizes and reinstates Indigenous knowledge frameworks into the debate and interrogates all inequities within its paradigms.[43] The Afro-feminist perspective digs even deeper, entailing much more than the simple decolonization of course reading materials or simply adding women to the Academy ranks. Its purpose is to aid *both* educators

41. Trevor Coombe, *A Consultation on Higher Education in Africa: A Report to the Ford Foundation and the Rockefeller Foundation* (New York, Ford Foundation, 1991) at p. 1.

42. N'DriAssié-Lumumba, *Empowerment of Women in Higher Education in Africa: The Role and Mission of Research*, (Paris, UNESCO Forum Occasional Series Paper No. 11, 2006) at p. 10. Available at: https://unesdoc.unesco.org/ark:/48223/pf0000151051 [accessed November 11, 2019].

43. Gloria Emeagwali and George Sefa Dei (eds.), *African Indigenous Knowledge and the Disciplines* (Rotterdam: Sense Publishers, 2014). Also see Eve Tuck and Wayne Yang, "Decolonization is not a Metaphor," *Decolonization: Indigeneity, Education and Society* 1(1) (2012): 1-40.

and learners "lift the veil" to uncover colonial legacies, sexism and heterosexism, to analyze colonial histories and values in search of ethics that reject domination and exploitation, and to articulate critiques of colonial ontologies (i.e. the nature of reality/"truth") and epistemologies (i.e. how we know this "truth").[44]

Internalized Colonialism: How it is Achieved

Everyone in the world is affected by colonization; it is structural, it is institutional, it is systemic and it is affective. In short, colonial power is diffused and *all* of us—even those responsible for its perpetuation—are victims of internalized colonialism and its ideologies; its logic is deeply ingrained in our daily lives. That is how powerful and pervasive colonialism and its legacies are. That is why the first target in the process of decoloniality must be our mentalities and consciousness. Such an approach is key to clearing our perception and developing a 20/20 vision of what a decolonized/decolonial Afrocentric Academy would look like. Some of us are privileged and valourized by colonial oppression and hegemony while others are dehumanized and decivilized by it. Very few of us would admit the extent to which colonialism and neo-colonialism affects us. The impulse is to either be defensive or offensive. Consequently, there is a need to step back and engage in serious self-reflection and introspection in order to collectively attempt to understand the fraught and complex issues of this global transnational phenomenon.

The phrase "colonized mind" was coined by the Brazilian theorist Paulo Freire, in attempting to describe the invisible ways that colonizers continue with their oppression even after dismantling the colonial physical architecture.[45] Freire highlighted the flaws in the pedagogical approaches of the contemporary education system where both teacher and student play a mechanistic and passive role in the learning process. Colonialism affects the way we think, the way we speak and the way we act. This worldview—including

44. Eve Tuck and Wayne Yang, "Decolonization is not a Metaphor," Note 43.

45. Paulo Freire, *Pedagogy of the Oppressed* (30th anniversary ed) (trans. Myra B. Ramos) (New York: Continuum, 2000 [1970]). Also see Kwame Nkrumah, *Neo-Colonialism: The Last Stage of Imperialism* (Ibadan: Heinemann Educational Books Ltd, 1970).

its constructed superiority and inferiority statuses—has been internalized. What makes colonization of the mind so effective is that its constructions are made to appear "natural." When something is presented as "natural," logic transmits the cognitive message that it is inevitable and immutable. It works to rationalize and justify racism, sexism, classism, heterosexism, ableism, and all the other -isms that we live with on a daily basis. "Naturalization" and "normalization" of social hierarchies are derived from ideas such as divine laws. In order to effectively break this cycle of colonization the concept of decoloniality needs to be internalized in such a way as to provide the route to more dignified ways of living. However, before discussing the decolonization of minds, how were they colonized in the first place? Four different but interlinked processes through which the imperial project achieved its goal of colonizing the mind, are explored in this section, offering examples to demonstrate how each of them works.

Through "Othering"

Gayatri Spivak offers conceptual clarity regarding the need of the empire to define itself against those that it is colonizing, explaining that the imperial definition of "self" is dependent upon its "other." The process of "Othering" is a way to enact difference and to justify existing power inequalities in a democratic dispensation.[46] It involves identifying the "us" from the "them" in opposition to each other. So, how do we learn who we are, and how we fit into the "us"? How do we learn where we stand in the various social hierarchies (racial, gender, class, sexual, etc.)? It is by learning how to differentiate our "self" from the Other. In other words, it is through "Othering." As Noble *et al.* remind us: "Identities are constantly negotiated around perceptions of universalising us-them categories which serve to provide symbolic dimensions of 'community.'"[47]

46. See Gayatri Chakravorty Spivak, "The Rani of Sirmur: An Essay in Reading the Archives" *History and Theory* 24(3) (1985): 247-272.

47. Greg Noble, Scott Ponyting and Paul Tabar, "Youth, Ethnicity and the Mapping of Identities: Strategic Essentialism and Strategic Hybridity Among Male Arabic-Speaking Youth in South-Western Sydney," *Communal/Plural* 7(1) (1999): 29-44. Also see Mike Featherstone, "Global and Local Cultures," in John Bird, Barry Curtis, Tim

In her book *Strange Encounters*, Sara Ahmed challenges our common understanding of the term "stranger."[48] The Oxford dictionary defines "stranger" as "A person whom one does not know or with whom one is not familiar." However, Ahmed challenges this definition by arguing that knowledge is constructed in such a way that we know who we are through understanding what we are not. I know I'm White because I'm not Black; I am a man because I'm not a woman; I'm well-to-do because I'm not impoverished; I'm straight because I'm not gay; I'm able-bodied because I'm not disabled. So, literally, *I am* because *you are not*.

Our sense of belonging derives from recognizing the difference of the Other—the stranger. In that sense the stranger is socially constructed as someone we already know. For example, I was not a "stranger" to the group of young White men who made monkey noises and beat their chests at me on a street in Belgium. Colonial constructions of my "difference" had acquainted me to them well before I flew to their country. Their feelings of hatred and fear towards me were planted in their minds couched in the positive language of love of nation, of their community and of their "selves." Instead of teaching them to hate Blacks, the imperial power teaches them to love those that are like them (the "us"). Those young men recognized themselves through a discursive construction of me as out of place, as an alien and therefore potentially dangerous.[49] My difference sealed their sameness. They viewed me as the "Other" who threatened the coherence and stability of their community, indeed, their nation.

Through Invisibilization

Colonialism undervalues non-Western forms of knowledge construction and their ways of being, rendering them invisible. What do I mean? Knowledge itself is generally constructed through

Putnam, George Robertson and Lisa Tickner (eds.), *Mapping the Futures*, pp. 169-187 (London: Routledge, 1993).

48. Sara Ahmed, *Strange Encounters: Embodied Others in Post-coloniality* (London: Routledge, 2000).

49. See Eddie Obangi, "Notes on the Nation: A Conversation with Sara Ahmed's *Strange Encounters: Embodied Others in Post-coloniality, The Cultural Politics of Emotion* and *Queer Phenomenology: Orientations, Objects and Others*," *Agenda* 30(2) (2016): 147-152.

colonial educational ideals; Indigenous realities (ontologies) and ways of knowing (epistemologies), for example, are often ignored and/or marginalized. Through neocolonial practices such knowledges are delegitimized and excluded from academic canon. On February 13, 2019, for example, BBC News reported that pangolins—those shy, nocturnal, scaly, anteaters—were the most trafficked mammals in the world.[50] The report asserted that, "The little-known pangolin is the most trafficked mammal in the world, leading to fears it could become extinct."[51] The intrinsic contradiction and inconsistency in this report was totally lost on the British scientists and reporters who provided the account. If an animal is hunted to near-extinction, logic tells us that its captors must know a great deal about it; clearly it is not "little-known"! Never mind that the pangolin (or *lugave*) is an important totem, traditionally protected in the Kiganda clan system for centuries, as it is in many other Indigenous communities in which this animal was once common. But, just as the colonialists Christopher Columbus "discovered" America in 1492 and John Speke "discovered" the source of the River Nile in 1858, obviously, the "native knower" of the pangolin does not count. Indigenous knowledge does not qualify as "science." The knowledge constructions of Indigenous people are at once disappeared and invisibilized.

By the same token, women and their societal roles are often invisibilized in socioeconomic policy discourse. To cite one example, the important unpaid domestic and care work that women perform on a daily basis has historically been erased from official economic agendas and analyses. Women's unpaid productive and reproductive labour generates a healthy labour force, hence significantly contributing to the market economy while reducing women's presence in the market.[52] Viewing care work

50. BBC, Helen Briggs, "Pangolins: Rare Insight into World's Most Trafficked Animal," (13 February, 2019) available at: https://www.bbc.com/news/science-environment-47200816 [accessed February 14, 2019].

51. See BBC, "Pangolin: The Most Trafficked Mammal in the World," (26 September, 2016), available at: https://www.bbc.com/news/av/world-africa-37449919/pangolin-the-most-trafficked-mammal-in-the-world [accessed February 14, 2019].

52. Anna Fälth and Mark Blackden, "Unpaid care work," *UNDP Policy Brief* (1) (2009): 1–6; and Shahra Razavi, "The Return to Social Policy and the Persistent Neglect of Unpaid Care," *Development and Change* 38(3) (2007): 377–400. Also see Meredith Turshen, "The

outside the market economy is part of the "coloniality of labour" which justifies its non-remuneration and invisibilizes its role in subsidizing capitalist exploitation.[53] Ultimately, the feminized, racialized bodies of African women are "disappeared" in the global economy and in the Economics lecture halls.

Through Binarization and Universalization

The imperial construction of human relations is through rigid binary frames—Black/White, female/male, feminine/masculine, straight/gay, able-bodied/disabled, rich/poor, beautiful/ugly, etc. And yet we know that humanity is much more complex and diverse than mainstream reductionist ideologies would like us to believe; the infinite shades of grey that nuance our lives are erased. Either/or understandings must be replaced with both/and logics.[54] If there is only Black and White, where do you place categories like mixed race, intersex, *mudoko dako*, *hijra*, bisexual, transgender without sounding ridiculous? The assumption that there exists a core essence to culture or human nature is just that—an assumption. Unfortunately, it is a patently wrong assumption.

The ontological and epistemological knowledge constructions of Indigenous peoples around the world have always understood the complexity, multiplicity and fluidity of humans. Examples of "third genders" abound in such communities, for example, the *Hijra* of India, the *Muxes* of Mexico, the *Mudoko dako* of Uganda, the *Katoey* of Thailand and the Two-spirited (derogatively referred to as *Berdache*) people among native Americans. All these examples of sex/gender diverse people at once disrupt the binaried forms of identity classification current in colonial systems of knowing and being.

Political Economy of Women in Africa," in Meredith Turshen (ed.), *African Women: A Political Economy*, pp. 1-22 (New York: Palgrave Macmillan, 2010).

53. Aníbal Quijano identifies "coloniality of labour" as one of the axes along which "coloniality of power" articulates its exploitative character. See Aníbal Quijano, "Coloniality of Power, Ethnocentricism, and Latin America," *NEPANTLA* 1(3) (2000): 533-580. Encarnacion Gutierrez-Rodrigues, argues that domestic labour is part of the coloniality of labour: See Encarnación Gutiérrez-Rodrigues, "Domestic Work-Affective Labor: On Feminization and the Coloniality of Labor," *Women's Studies International Forum* 46 (2014): 45-53.

54. See Vivian May, *Pursuing Intersectionality, Unsettling Dominant Imaginaries* (New York: Routledge, 2015). For a more detailed discussion of these issues see Chapter 3 of this book.

Not only do they reinscribe binary understandings to what is a nuanced spectrum, i.e. the continuum of human experience and learning, but they challenge what María Lugones terms "coloniality of gender."[55] They move us from the exclusion implicit in "Othering" to inclusive acknowledgments. The ontological and epistemological binary system that we are exposed to orients us into a normative logic of binary thinking. It locks us into a system of structural inequality whereby we view the "us" in opposition to "some other." The inequality is based on the belief that "the other" lacks some desirable characteristic that the "us" has. It is such a mentality that perpetuates exclusionary worldviews even among colonized communities themselves.

There are no essential qualities to being. The reality is that all binary distinctions are strategically constructed and universalized to serve colonial vested interests. The constructed "essence" or norms are then used as a basis to police and punish those who deviate from the constructed norm. Our identities are many (gender, race, ethnicity, nationality, religion, age, socioeconomic class, able-ness, sexuality, marital status, etc.), but we are much more than the sum total of them. The identities that make us who we are intersect not additively but multiplicatively. Our different "selves" or identities intertwine in complex ways and, at various levels, result in dominance and inequalities.

Through Authoritative Knowledges

In the mid-twentieth century, political economy scholarship sought to analyze the capitalist system. One of the charges that such scholars proffered against particular kinds of authoritative knowledges was that they played a key role in legitimizing the interests of colonialism, particularly justifying discrimination. Certain knowledges were permitted to evolve as "science" while other Indigenous knowledges were simply labelled as lore, superstition and quaint fancies. In his book *The order of things: An archaeology of human science*, Michel Foucault clarifies the phenomenon:

55. See María Lugones, "Heterosexualism and the Colonial/Modern Gender System," *Hypatia* 22(1) (2007): 186-209.

> There can be doubt, certainly, that the historical emergence of each one of the human sciences was occasioned by a problem, a requirement, an obstacle of a theoretical or practical order: the new norms imposed by industrial society upon individuals were certainly necessary before psychology, in the course of the nineteenth century, could constitute itself as a science; and the threats that, since the French Revolution, have weighed so heavily on the social balances, and even on the equilibrium established by the bourgeoisie, were no doubt also necessary before a reflection of the sociological type could appear.[56]

The work of philosopher Thomas Kuhn, who undertook a historiographic examination of the development of science, was instrumental in revealing the political economy of science through his idea of paradigms; he argued that science conforms to predetermined paradigms.[57] Following Kuhn, an increasing number of historians devoted their work to analyzing the relationship between science and imperialism.[58] The empire funded scientific projects that "served or promised to serve the direct economic and political goals of imperialism."[59] Science lends authority to knowledge claims that become difficult to refute. Good examples can be seen in social anthropology and evolutionary science, which provided the main oxygen and lifeblood to racialist social paradigms.[60] In fact, as Quijano reminds us, "The idea of race, in its modern meaning, does not have a known history before the

56. Michel Foucault, *Order of Things: An Archaeology of Human Science* (London: Tavistock, 1970) at pp. 344-45.

57. See Thomas Kuhn, *The Structure of Scientific Revolutions* (Chicago: University of Chicago Press, 1962). Kuhn defines paradigm as standing for "the entire constellation of beliefs, values, techniques, and so on shared by the members of a given community." [p. 175]. Paradigms operate at a global scale by dictating or framing the models within which to conduct research, study, etc., following predetermined assumptions and theorizations.

58. E.g., see Simon Schaffer and Steven Shapin, *Leviathan and the Air-Pump* (Princeton, NJ: Princeton University Press, 1985); Paolo Palladion and Michael Worboys, "Science and Imperialism," *ISIS* 84(1) (1993): 91-102; Deepak Kumar, "Economic Compulsions and the Geological Survey of India," *Indian Journal of the History of Science*, 17 (1982): 289-300; and Lewis Pyenson, *Empire of Reason: Exact Sciences in Indonesia, 1840-1940* (Leiden: Brill, 1989).

59. Paolo Palladion and Michael Worboys, "Science and Imperialism," Note 58 at p. 101.

60. See e.g., Samuel Huntington, *The Clash of Civilizations and the Remaking of the World Order* (New York: Simon and Schuster, 1997); and Robert Kaplan, *The Coming Anarchy: Shattering the Dreams of the Post-Cold War* (New York: Vintage, 2000).

colonization of America… race and racial identity were established as instruments of basic social classification."[61]

The ideologies that amplify the significance of racial differences are so effective that they are deeply embedded in our psyches and for most of us, very difficult to shake off. The Caucasian is strategically constructed as superior, while the African is placed at the bottom of the racial hierarchy, closest to apes in the "mapping of species." Charles Darwin's evolutionary theory provided the doctrine for White supremacy.[62] In *The Descent of Man and Selection in Relation to Sex* (1871), Darwin laced his evolutionary theory with imperial, racist and sexist overtones aligned with British colonialism.[63] He described the "Western nations of Europe" to have "so immeasurably surpass[ed] their former savage progenitors and stand at the summit of civilization."[64] He then went on to contrast this "civilized race" to non-European "savage races" and declared that "the civilized races of man will almost certainly exterminate, and replace, the savage races through the world."[65]

Such discourse was the "moral platform", the *raison d'etre* that imperialists like Cecil Rhodes needed to expand territories; to plunder, exploit and enslave. Hence, through social Darwinism, the colonizers convinced themselves and the rest of the world of the "White man's burden" to "civilize" the world.[66] Indeed, Darwin's work was welcomed by all colonialists and perpetrators of racist genocide throughout the world.[67] It still guides the thinking of

61. Aníbal Quijano, "Coloniality of Power," Note 53, at p. 534.

62. See Charles Darwin, *On the Origin of Species by Means of Natural Selection, or the Preservation of Favoured Races in the Struggle for Life* (London: John Murray, 1859).

63. Diarmid Finnegan, "The Spatial Turn: Geographical Approaches in the History of Science," *Journal of the History of Biology* 41 (2008): 369-388.

64. Charles Darwin, *The Descent of Man and Selection in Relation to Sex* (London: John Murray, 1871) at p. 393.

65. Ibid. at p. 436.

66. See Rudyard Kipling's 1899 poem, "The White Man's Burden: The United States and the Philippine Islands" *Rudyard Kipling's Verse: Definitive Edition* (Garden City, New York: Doubleday, 1929). This poem came to symbolize and justify European colonialism, the "burden" being their presumed responsibility to govern and "civilize" non-White people. Also see Bethwell A. Ogot, "African Historiography: From Colonial Historiography to UNESCO's General History of Africa," in Bethwell Ogot (ed.), *General History of Africa Vol. 5—Africa from the sixteenth to the Eighteenth Century*, pp. 71-80 (Oxford: Heinemann, 1992); and Basil Davidson, *African Civilization Revisited*, (Trenton, NJ: Africa World Press, 1991).

67. E.g., see Richard Weikart, "The Role of Darwinism in Nazi Racial Thought," *German*

contemporary racist ideologies that wrongly construct evolution as a linear progression instead of the evolutionary model of intricate/complex systems of variations and admixture of species that evolved into modern humans and whose ancestral homeland is located in Africa.[68] Darwin also attempted to justify the differences between men and women by locating gender inequality in reductionist biological explanations; his sexist theory of "sexual selection" endeavoured to demonstrate the innate passivity of women and their natural subordination. The flaws in this "scientific" theory were uncovered by the nineteenth century female scientist Antoinette Blackwell.[69] Indeed, dominant knowledge practices within the social and natural sciences construct theories of women that not only represent them as the inferior-Other and the deviant-Other, but also reinforce racially-gendered hierarchies.[70]

European explorers and missionaries were the earliest anthropologists as they observed the ways of the "natives" and recorded their observations. Invariably, they interpreted "native" lifestyles through Eurocentric eyes, regarding them based on values nurtured in the Western kitchen. Most notable among the early explorers/missionaries to liaise with professional anthropologists were Richard Burton, David Livingstone, and Henry Morton Stanley from the United Kingdom, Maurice Leenhardt from France and Father Wilhelm Schmidt from Germany.[71] These pioneers of the continental invasion appreciated the importance to the colonizer of understanding the ways of the "native" in order to successfully execute the colonization project. Their detailed descriptive notes—diary entries, letters and reports—later formed the first raw data for scholars to establish the departments of anthropology

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Studies Review 36(3) (2013): 537-556; and Mohamed Adhikari, "'Streams of Blood and Streams of Money': New Perspectives on the Annihilation of the Herero and Nama Peoples of Namibia, 1904-1908," *Kronos* 34 (2008): 303-320 at p. 305.

68. Sarah A. Tishkoff and Scott M. Williams, "Genetic Analysis of African Populations: Human Evolution and Complex Disease," *Nature Reviews Genetics* 3(8) (2002): 611-621.

69. Antoinette Blackwell, *The Sexes Throughout Nature* (New York: G.P. Putnam's Sons, 1875 and Westport, CT: Hyperion Press, 1976).

70. See Heidi Grasswick (ed.), *Feminist Epistemology and Philosophy of Science: Power in Knowledge* (Dordrecht: Spinger, 2011).

71. Peter Pels, "The Anthropology of Colonialism: Culture, History and the Emergence of Western Governmentality," *Annual Review of Anthropology* 26 (1997): 163-183.

which developed into an important element of the colonial university's focus.[72] For example, Livingstone's renowned 1857 work, *Missionary Travels and Researches in South Africa*, was often cited as sound authority by anthropologists, while it was also a guiding text for the governors, district officials and social workers who peopled the colonial state.[73] Father Schimidt's journal *Anthropos* served a similar purpose.[74] Similarly, the writings of Richard Burton "embellished a theory of race developed during the eighteenth century, when scientific principles and practices of taxonomic classification were applied to human beings."[75] In this way, the Victorian traveler, the colonial officer and the Western anthropologist were tied together. Despite the fact that modern science has refuted socio-Darwinian theories that attempt to rationalize status quo inequalities based on race and gender, the Darwin industry lives on in the sciences.[76]

Race is forced on us; biological races do not exist. The *meaning* attached to our skin-colour and other outward physical attributes is definitely a social construction, an arbitrary fiction backed by pseudoscience. It is a colonial construction based merely on people's phenotype, i.e., their general bodily characteristics established through the interaction of genotype (genetic constitution) with the environment. For example, skin colour correlates with geographical temperature—the nearer you are to the cold earth poles the paler your skin colour, with skin shades darkening for those settled closer to the hot equator.[77] It is basically skin melanin adaptation to ultraviolet radiation levels emitted by the sun. This is quite distinct from the genotypes of human species.

72. Robert Thorton, (1983), "Narrative Ethnography in Africa, 1850-1920: The Creation and Capture of an Appropriate Domain for Anthropology," *Man* 18: 502-520.

73. Vasiliki Galani-Moutafi, "The Self and the Other: Traveler, Ethnographer, Tourist, *Annals of Tourism Research* 27(1) (2000): 203-224 at p. 206.

74. Peter Pels, "The Anthropology of Colonialism," Note 71.

75. Myles Osborne and Susan Kingsley Kent, *Africans and Britons in the Age of Empires, 1660-1980* (London: Routledge, 2015) at p. 59.

76. See George Levine, "Reflections on Darwin and Darwinizing," *Victorian Studies* 51(2 (2009): 223-245.

77. See Dani Wadada Nabudere, "Cheikh Anta Diop: The Social Sciences, Humanities, Physical and Natural Sciences and Transdisciplinarity," *International Journal of African Renaissance Studies* 2(1) (2007): 6-34; and Arun Saldanha, "Reontologising Race: The Machinic Geography of Phenotype," *Environment and Planning D: Society and Space* 24(1) (2006): 9-24.

Indeed, studies have found that two Europeans are not necessarily more likely to be genetically similar; an African and a European may in fact be more genetically similar than any two Europeans.[78] White supremacist ideologies deliberately exaggerate phenotype differences; they also obscure the differences between the concepts of genotype and phenotype to rationalize racist systems.

Proof that race has no basis in biology is the fact that at different points in history it has found different permutations. Hence, Nazi Germany enacted laws that marked Jews and "gypsies" as impure non-Aryans; the one-drop rule[79] still dominates understandings of race in the United States; there is a time in the US when the Irish, Italians and Jews were not considered White; a White person in Brazil is considered Black in the US; and racial identity in Apartheid South Africa was assessed using a simplistic pencil-test: if a pencil pushed through a person's hair did not fall out, that person was deemed to be a *Kaffir*.[80] So, historically, constructed races have been used to rationalize privilege and to stigmatize, to justify prejudices and exclusion.

In Brief...

Coloniality deploys a certain type of "science" that is positivist, that stems from the enlightenment obsession with knowing and categorizing, that is dualistic and hierarchical to undermine Indigenous knowledges. People internalize the interlocking hierarchies that create systems of privilege and disadvantage in deeply personal ways. Part of the challenge of decoloniality is to

78. See, for example, Kwame A. Appiah, *In My Father's House: Africa in the Philosophy of Culture* (New York: Oxford UP, 1992); Christopher Miller, *Blank Darkness: Africanist Discourse in French* (Chicago and London: University of Chicago Press, 1985); Cheikh Anta Diop, *Civilization or barbarism an authentic anthropology*, trans. Y.L. Ngemi (New York: Laurence Hill Books, 1981); and American Anthropological Association (AAA) Statement on Race, (May 17, 1998), available at: https://www.americananthro.org/ConnectWithAAA/Content.aspx?ItemNumber=2583 [accessed on April 15, 2019].

79. The one-drop rule is about the historical legal classification of race in the United States. It states that if a person has one drop of "African blood" regardless of their phenotypical appearance, they are considered to be Black. Although it does not have legal backing today, it remains socially pervasive. See Patrick Wolfe, "Settler colonialism and the elimination of the native," *Journal of Genocide Research* 8(4) (2007): 387-409.

80. See Gillian Straker, "Shaping Subjectivities: Private Memories, Public Archives," *Psychoanalytic Dialogues* 21(6) (2011): 643-657.

disentangle and unravel these deeply embedded connections between personal, political, scientific and social structures and to end their recycling. Activists such as Martin Luther King Jr, Steve Biko, Mamphela Ramphele, Cheikh Anta Diop, Okotp'Bitek, Angela Davis, James Brown and Bob Marley advocated for Black Consciousness, which aims to raise awareness about African values and pride eroded by slavery, racism and colonialism. However, just like the pan-African Movement, the Black Consciousness movement tended to primarily focus on men.[81] Other scholars like bell hooks, Peggy McIntosh, Frances Kendall and Robert Jensen advocate for White people to end the denial of their privilege and to consciously acknowledge and challenge the power and resources arbitrarily awarded to their light skins by a colonial, racist system.

Finally, a word on the factory of intellectual ideas, the Academy. The very nature of "The Academy" is borrowed from colonial structures meant to commodify knowledge and produce an elite class that dominates power and resources. If the African university mimics Western universities to date, is it any wonder that Africa's best brains are routinely drained to the West? The looting of Africa does not spare its human capital. Through selective immigration schemes, Western countries promote brain drain from the continent, sucking up the continent's best human capital, including intellectual thinkers for their own development.[82] The Diversity Immigration Visa (DV program) or Green Card Diversity Lottery Program, for instance, allows a significant quota of skilled professionals from outside the USA to emigrate to the United States for work.[83] The European Union equivalent is the "Blue Card" scheme which permits highly qualified non-EU citizens, particularly from the global South, to freely practice their professions in EU countries.[84] Prime Minister Boris Johnson's "African outreach" programme targeting "qualified migrants" from

81. Kimberley Yates, Pumla Gqola & Mamphela Ramphele, "This Little Bit of Madness: Mamphela Ramphele on Being Black and Transgressive," *Agenda* 14(37) (1998): 90-95.

82. See Mohamed El-Khawas, "Brain Drain: Putting Africa between a Rock and a Hard Place," *Mediterranean Quarterly* 15(4) (2004): 37-56.

83. Ellen Gwaradzimba & Almon Shumba, "The Nature, Extent and Impact of Brain Drain in Zimbabwe and South Africa," *Acta Academica* 42(1) (2010): 209-241.

84. See application details and criteria on the official EU website:https://www.eu-bluecard.com/[accessed November 2, 2019].

Africa to the UK in the wake of Brexit, is the latest example of this.[85] Rotimi Sankore cautions the continent to take urgent measures to reverse the "alarming rate" at which "Africa is currently hemorrhaging its best brains."[86] Indeed, the executive Green and Blue Card systems represent a privileged corridor of traffic to the West in an era of ever tightening anti-immigration racist policies against non-Whites. In that sense, in addition to being a source of natural resources for the global north, the African Academy also serves as an intellectual outsource for these regions. But what would a decolonized/decolonial university look like?

A Framework for Transforming the African Academy

Having discussed some of the key forces deployed by the imperialists to colonize our minds, with the educational institutions directly complicit in the process, what is to be done? How can we transform the Academy from its current elitist and dominant colonial paradigms? Space does not allow a nuts-and-bolts examination of how to implement the process of transformation. Provided below is a general framework for embarking on the process of decoloniality, starting with the institutional ethos that prevails at our universities. There are some inevitable overlaps across the given framework.

The Institutional Ethos

Like most institutions in the world, the Academy is a gendered institution in that it was created by men, for men and is still largely about men. Women are considered and treated as an aberration in African Academies, constantly reminded that they do not belong. The Forum for African Women Educationalists (FAWE) reports that only 6 percent of African women participate in higher education

85. See *The Guardian*, "Post-Brexit Vision: UK now Inks Africa Outreach Fund," (Jan 21, 2020), available at: https://www.ippmedia.com/en/news/post-brexit-vision-uk-now-inks-africa-outreach-fund [accessed Feb 2, 2020].

86. Rotimi Sankore, "Brain drain: killing us softly," *New African*, Issue 445 (2005): 8-12 at p.8.

processes as students, faculty or administrators."[87] But as you go down the ranks to support staff positions, there is an over-representation of women. African women within the Academy generally feel "out of the loop" and alienated from university culture.[88] The typical student and lecturer is an elite man on whom society confers an aura of authority and legitimacy. The further you are from resembling this prototype university "citizen," the more difficult you will fit in and be accepted. In that sense, most universities are microcosms of the wider African societies that maintain strong forces of sexism, racism, homophobia, transphobia and violence against women.

Decolonial transformation of the Academy involves restructuring the very ethos and culture of the institution. A responsive institutional ethos acknowledges diverse needs and vulnerabilities. It works very hard to create bridges and flatten hierarchies. Policies and programmes are put in place *and* implemented to address pertinent issues such as gender injustice, underrepresentation and gender violence. Community members will not fully engage or feel truly valued unless their worth and beliefs are respected regardless of race, gender, origin, religion, sexual orientation, disability, age, marital status and so on. To effectively tackle the problem from its root the structural and institutional issues that undergird the gendered culture and ethos of the African Academy must be addressed.

The grossly disproportionate underrepresentation of women in the Academy is a direct result of history. It forms part of the colonial legacy that excluded women from higher education, privileging men who were expected to take over the reins of government departments, participate in commerce and other activities in the "public" domain following flag independence. Women, on the other hand, were expected to "thrive" as domesticated subjects without requiring much education. This structural disadvantage for women

87. FAWE, "Promoting women's access and professional development in higher education," (2018), Report available at: http://fawe.org/our-programmes/research/women-in-higher-education/ [accessed January 28, 2020].

88. See Ebrima Sall (ed.), *Women in Academia: Gender and Academic Freedom in Africa* (Dakar: CODESRIA, 2000); and Amina Mama, "The Challenges of Feminism: Gender, Ethics and Responsible Academic Freedom in African Universities," *Journal of Higher Education in Africa* 9(1/2) (2011): 1-23.

was made worse in the capitalist neoliberal environment of the 1980s and 1990s, whereby governments diverted funds from public services like education to facilitate the markets whose priorities were attuned to Western economies. In the corporatized neoliberal university which elides social justice concerns, women were pushed even further to the margins and away from the Academy. Furthermore, the labour-intensive caring work that women perform, in addition to their professional responsibilities, adversely affects their academic career progression.[89] All the above takes place within the aegis of patriarchal authority with its concomitant gender-based inequities, stereotyping and violence. Jane Bennett sums all this up: "Gendered distress around women's structural disadvantage (built into conditions of service, ignorance of reproductive labour, and the impossibility of research-based creativity under expectations of 'dual labour') indicates that the 'core business' of institutional practice involves segregating academic work from family networks, producing scholars and teachers without knowledge of the complex world of social reproductive labour, and ensuring the 'masculinization' of people within the Academy."[90] Bennett contends that by "masculinization" she means "the process of living dependent on the upaid and largely unacknowledged, reproductive work of those gendered as 'women': context, class, and culture determine the vulnerability of males and females to this process."[91]

Sexual harassment and assaults are a manifestation of structural violence and discrimination against women within the ambit of higher education.[92] The impunity with which these crimes are committed and the public condemnation that women receive when they speak out on such issues exemplifies the in-built gender inequities that are at play. To cite just three concrete examples from three African countries: Dr. Isabel Phiri, together with three women

89. Sylvia Tamale and J. Oloka-Onyango, "Bitches at the Academy: Gender and Academic Freedom at the African University," *Africa Development* 22(1) (1997): 13-37.

90. Jane Bennett, "Exploration of a 'Gap': Strategising Gender Equity in African Universities," *Feminist Africa* 1 (2002): 34-63 at p. 41.

91. Ibid. at p. 60.

92. Here, "structural violence" refers to the physical and psychological harm that results from gender-based discrimination, exploitation and oppression in the context of hetero-patriarchal neoliberal-capitalist systems.

colleagues, delivered a research-based paper on sexual harassment and rape at the Chancellor College campus at the University of Malawi in 1995. Phiri was subsequently interviewed about the findings. After the interview was broadcast on national radio, students attacked both her office and home with big rocks, endangering her family's life and causing extensive damage to property. The verbal abuses were also relentless. The male-dominated administration responded by setting up a committee to basically verify the quality and validity of the study findings that had so upset the "aggrieved students."[93]

A similar fate befell Penda Mbow, a history professor at Université Cheikh Anta Diop in Senegal, when she was publicly castigated by a colleague and the university imam for speaking out on issues regarding gender and sexuality: "My words were twisted by others, and the very same day (March 8) I received a letter containing death threats and was physically attacked by young Muslim extremists."[94] The third example involves a personal experience. In 1996, I was castigated through an anonymous letter addressed to: "You Bitch!" lambasting me for challenging sexist media reports: "We don't need your views in the press or on the radio… keep whatever nonsense you have in your head," the author admonished.[95] These three examples demonstrate what feminist academics have to endure at African universities. It is quite paradoxical that institutions largely leave the weight of addressing gender-related inequities to female academics but when at it, they are promptly policed to ensure that they do not upset the capitalist hetero-patriarchy order. Ultimately, such policing has the debilitating effect of impeding women's academic and intellectual work, not to mention violating their fundamental freedoms and dignity.

Sexual harassment and violence are endemic in academic spaces with hardly any efforts to address the vice in any serious way. The few African universities with policies in places to address the

93. Isabel Apawo Phiri, "Gender and Academic Freedom in Malawi," in Ebrima Sall (ed.), *Women in Academia*, Note 88, pp. 47-62.

94. Penda Mbow, "Academic Freedom and the Gender Issue: A Report from Senegal," in Ebrima Sall (ed.), *Women in Academia*, Note 88, pp. 64-77 at p. 64.

95. See Sylvia Tamale and J. Oloka-Onyango, "Bitches at the Academy," Note 89.

heinous crimes of sexual abuse are ineffective and/or their enforcement approached with a *laissez-faire* attitude.[96] Egyptian scholar Helmi Sharawy draws on Pierre Bourdieu's "habitus" to explain "the weight of the cultural male history" that extends men's taken-for-granted dominance to academic spaces.[97] Actually, the root causes of such culture are structural, systemic and contextual. A sexist culture, for example, that sexualizes women's bodies and suggests that they are readily "available" for men's enjoyment, perpetuates women's abuse. Furthermore, the institutionalized homophobia and transphobia embedded in Africa's sociopolitical order by colonialism fuels violence. Such cultures can only be shifted through a radical transformation of our gendered social structures. Establishing "women's universities" as in the Women's University in Africa located in Marondera, Zimbabwe,[98] may address some of the problems currently faced by women in the African Academy, but it will hardly shift the locus of structural forces. Effective interventions would have to be intersectional in nature, taking into account the meanings of being a gendered man or woman, gendered division of labour, sexist and racial stereotypes, and institutionalized violence, etc. Peeling away the layers of coloniality would also entail interrogating the intersections between legal, religious, "cultural" and political discourse. At the end of the day, the institutional ethos makes the difference between students looking forward to or dreading the learning experience and between academics thriving or barely surviving in the Academy. The decolonization/decolonial project should seek to imbue an inclusive afrocentric ethos that embraces *Ubuntu* and afro-feminism in all its institutions of higher learning.

96. See Charmaine Pereira, "The Politics of Sexual Harassment and Sexual Violence in Nigerian Universities: Overview of the Research Initiative for Women's Studies in Nigeria," Abuja, Sexual Harassment Action Research Project – Unpublished Report, 2011; Jane Bennett, "The Southern African Network of Higher Education Institutions Challenging Sexual Harassment/Sexual Violence, 1996–2001" in Akosua Adomako Ampofo and Signe Arnfred (eds.), *African Feminist Politics of Knowledge*, Note 24; and Sylvia Tamale, Consolata Kabonesa, Betty Ezati, Chris Mbazira and Aaron Mushengyezi, *Report on the Investigation of Sexual Harassment at Makerere University* (June 2018), available at: https://news.mak.ac.ug/sites/default/files/downloads/Makerere-Committee-Investigating-Sexual-Harassment-FINAL-Report-June2018.pdf [accessed Dec 12, 2019].

97. Helmi Sharawy, "Social Dimensions of Intellectual and Academic Freedom in Egypt," in Ebrima Sall (ed.), *Women in Academia*, Note 88, pp. 79-103 at p. 102.

98. See http://www.wua.ac.zw/ [accessed February 2, 2020].

The bulk of what is taught and learnt in the African Academy is colonial, being deeply rooted in orthodox Western philosophical thought and not grounded in the lived realities of its people. Moreover, coloniality acts as the epistemological centre and reference-point for knowledge as our histories are designed as a process of Europeanization (e.g., the periodization: pre-colonial, colonial and post-colonial).[99] No discipline is spared from such one-sided colonial bias. In the legal Academy, for example, regardless of whether we follow the Common Law or Civil Law tradition, the prevalent conception of law is positivistic. The formalistic positivist approach stresses black-letter law (i.e., legal rules) at the expense of both legal philosophy and the society in which law operates. This is at direct odds with living customary law which cannot be abstracted from its social context.[100] Feminists in African legal Academies started challenging the gendered character of the law as far back as the 1980s.[101] In 1994, legal feminists from eastern and southern Africa, in cooperation with the University of Oslo, established The Southern and Eastern African Regional Centre for Women's Law (SEARCWL) with the aim of exposing students to decolonial gendered law curricula.[102]

Similarly, the Economics curricula on the continent are based on the Western liberal "modernization theory" which is centred on a five-stage economic development and measured through the

99. See Emma Battell Lowman and Lucy Mayblin (eds.), Special Journal Issue: "Theorising the Postcolonial, Decolonising Theory," *Studies in Social and Political Thought* Vol. 19 (2011).

100. See http://www.searcwl.ac.zw/ [accessed February 2, 2020]. Also see Chuma Himonga and Fatimata Diallo, "Decolonisation and Teaching Law in Africa with Special Reference to Living Customary Law," *PER/PELJ* 20 (2017) – DOI, http://dx.doi.org/10.17159//1727-3781/2017/v20i0a3267 [accessed December 5, 2019].

101. See e.g., Mulela Margaret Munanula, "Gender, Bureaucracy and Law: The Search for Change," *Zambia Law Journal* 21 (1989): 48-60; Julia Segar and Caroline White, "Constructing Gender: Discrimination and the Law in South Africa," *Agenda* 4 (1989): 95-112; Sylvia Tamale, "Law Reform and the Rights of Women in Uganda," *East African Journal of Peace and Human Rights* 1(2) (1993): 164-194.

102. See Patricia Kameri-Mbote, Anne Hellum, Julie Stewart, Ngeyi Ruth Kanyongolo & Mulela Margaret Munalula, "Engendering and Decolonising Legal Education: South-South and South-North Co-operation," in Tor Halvorsen, Kristin Skare Orgeret and Roy Krøvel (eds.), *Sharing Knowledge, Transforming Societies: The Norhed Programme 2013-2020*, pp. 474-499 (Cape Town: African Minds, 2019). It must be noted, however, that the curriculum is still based on many Western concepts.

market-oriented Gross Domestic Product (GDP) metric.[103] To make it worse, it is largely taught devoid of any critical political-economy or gendered analyses. Such theories will never deliver any tangible development to Africa and only serve to orient the continent towards damaging economic neoliberalism and gross inequity. Indeed, most Economics departments on the continent shamefully mainstream authors such as Walter Rostow and not critical scholars such as Walter Rodney, Debbie Budlender or Marilyn Waring. Rodney's observation of the nature of the education in place was apt: "Colonial schooling was education for subordination, exploitation, the creation of mental confusion and the development of underdevelopment."[104] South African feminist economist Budlender has done tremendous work to demonstrate the importance of integrating a gender perspective into government budgets to overcome inequalities.[105] Crucially, she critiques the theoretical assumptions underpinning the framing of national budgets. For her part, Waring has consistently critiqued conventional computations of economic and productive activities, including the United Nations System of National Accounts (UNSNA), declaring, "When you are seeking out the most vicious tools of colonization, those that can obliterate a culture and a nation, a tribe or a people's value system, then rank the UNSNA among those tools."[106]

The ultimate outcome of these gigantic curricular "blind spots" that invisibilize our Indigenous histories, languages, ways of knowing and being, is to instil and perpetuate internalized colonialism. At a minimum, orthodox Western canons should be problematized so as to adopt philosophical tools that are relevant to

103. See Symphorien Ntibagirirwa, "Cultural Values, Economic Growth and Development," *Journal of Business Ethics* (2009) 84:297–311.

104. Walter Rodney, *How Europe Underdeveloped Africa* (Washington, DC: Howard University Press, 1972/1981) at p. 241.

105. See e.g., Debbie Budlender, "The Political Economy of Women's Budgets in the South," *World Development* 28(7) (2000): 1365-1378; and Debbie Budlender, "A Global Assessment of Gender Responsive Budget Initiatives," in Debbie Budlender, Diane Elson, Guy Hewitt and Tanni Mukhopadhyay (eds.), *Gender Budgets Make Cents: Understanding Gender Responsive Budgets*, pp. 83-130 (London: The Commonwealth Secretariat, 2002).

106. Marilyn Waring, *If Women Counted: A New Feminist Economics* (London: Macmillan, 1989) at p 49.

Africa.[107] Oyeronke Oyewumi points to the deficiencies of African practitioners of knowledge, warning that as long as theories and concepts that inform our research are generated from Western experiences or the foundational questions that guide our studies are generated in the West, we shall not escape the colonial mentality.[108] A loss of one's history is equivalent to a loss of one's self, a loss of one's soul. Cheikh Anta Diop was convinced that an African renaissance depended upon Africa rediscovering its historical memory, i.e., prehistory, beyond "pre-colonial." His transdisciplinary study of Egyptology helped deconstruct Eurocentric epistemologies and to construct an alternative epistemology and philosophy of history and African relations.[109] Diop and others like Martin Bernal and Halford Mackinder have constructed important counter-narratives that relocate classical civilization from Greece (as dominant Eurocentric narratives would want us believe) to Africa and Asia.[110]

Moreover, the content of most of these curricula rely upon static notions of culture and identity and impart no critical analytical skills. It is deplorable that six decades after flag independence no African state has undertaken any radical overhaul of the colonial education systems left behind by the imperialists. Not only is the continent still wedded to hegemonic Eurocentric paradigms of knowledge and modernity, but most countries will protect and defend colonial educational policies to the hilt. The few attempts made to change the content of colonial education have only resulted in cosmetic reforms without realizing any paradigmatic shifts. Perhaps Tanzania made the best efforts on the continent to indigenize their primary and post-primary curricula but their

107. See Lucy Allais, "Problematising Western Philosophy as one Part of Africanising the Curriculum," *South African Journal of Philosophy* 35(4) (2016): 537-545.

108. Oyeronke Oyewumi, *The invention of women: Making African Sense of Western Discourses* (Minneapolis: University of Minnesota Press, 1997) at pp. 22-23.

109. Dani Wadada Nabudere, "Cheikh Anta Diop," Note 77 at p. 12.

110. See Martin Bernal's three volumes Entitled, *Black Athena: The Afroasiatic Roots of Classical Civilization*. Volume I: *The Fabrication of Ancient Greece, 1785-1985* (New Brunswick, Rutgers University Press, 1987); Volume II: *The Archeological and Documentary Evidence* (New Brunswick, Rutgers University Press, 1991); and Volume III: *The Linguistic Evidence* (New Brunswick, Rutgers University Press, 2006). Also see John Halford Mackinder, "The Geographical Pivot of History," *The Geographical Journal* 170(4) (1904): 230-321.

science curricula remain colonial.[111] Ladislaus Semali describes the dilemma that he faced as a young teacher in the early years of Tanzania's post-independence era teaching "Shakespeare's *Julius Caesar, The Adventures of Huckleberry Finn, Gulliver's Travels*, Greek mythologies, and the famous Arabian stories of Alfu-Lela-Ulela and Ali Baba and his seven sons." He lamented that "Missing in these works were examples of local imagery, history, folklore and African beliefs. Instead, students were taught to value and admire the beliefs, stories, histories and myths of other societies."[112] Decades down the road, Semali's dilemma still holds true for most educators and students on the continent.

Michel Foucault coined the concept of power-knowledge to illuminate the inextricable link between the two entities of "power" and "knowledge." He explained that power-knowledge can be limiting but also liberating.[113] Colonial education produces knowledge that influences our activities and existence, in the process reinforcing colonial interests. Hence, curriculum development is a significant tool for the decolonial project. Not only would indigenizing the curriculum validate multiple cultural knowledges but it would also produce more reflective and proactive learners given the familiarity of the content. As Edward Shizah points out, "It is a decolonizing perspective that views schooling, knowledge, and learning as an interactive and meaningful experience. From a progressive anticolonial approach, curriculum comprises common beliefs and values, and a progressive orientation with emphasis on making meaning."[114] Such an approach would foster unlearning and relearning for Africans. Indigenous content needs to be purposively and thoughtfully interwoven into curricular frameworks that are informed by

111. See President Julius Nyerere's 1967 development project through *Education for Self Reliance* and *Ujamaa* Education Programme in Edward Shizha, "Reclaiming Our Indigenous Voices: The Problem with Postcolonial Sub-Saharan African School Curriculum," *Journal of Indigenous Social Development* 2(1) (2013): 1-18 at pp. 10-11.

112. Ladislaus Semali, "Community as Classroom: Dilemmas of Valuing African Indigenous Literacy in Education," *International Review of Education* 45(3/4) (1999): 305-319 at p. 309.

113. See Michel Foucault, *The History of Sexuality* (New York: Pantheon Books, 1978).

114. Edward Shizah, "Indigenous Knowledge Systems and the Curriculum" in Gloria Emeagwali and George Sefa Dei (eds.), *African Indigenous Knowledge and the Disciplines*, Note 43 pp. 113-129 at p. 115.

Indigenous ontologies and epistemologies. It does not make sense, for example, for a science curriculum to ignore traditional ecological knowledge that has been "developed through generations of contact by Indigenous peoples with their lands."[115] Instead, such knowledge is currently sought after by Western neocolonial interests that appropriate it through the manipulation of intellectual property rights.[116]

Restructuring the curricula must start at the elementary level of schooling where the process of colonial indoctrination and whitewashing begins. Indigenization of the curriculum would be revolutionary by integrating African cultural values, beliefs, practices, norms and institutions into its content in a transdisciplinary fashion. A transdisciplinary curriculum is one that transcends disciplines and integrates various perspectives and approaches. The complex problems that Africa faces cannot be solved by monodisciplinary, specialized and fragmented approaches far removed from the lived realities of society.[117] Transdisciplinary teaching is the only way that can sharpen critical thinking skills, unlearning and relearning in a bid to see the world differently. Neither multidisciplinary nor interdisciplinary approaches are sufficient for decolonial thought.[118] Both approaches spring from siloed disciplines which view the world from discrete lenses. It gives the impression that disciplines and professions are incongruent and self-contained, having little, if anything, to do with each other. Nothing can be further from reality. A transdisciplinary approach rises above disciplinary boundaries and juxtaposes disciplinary perspectives, revealing the fluidity and

115. Ibid. at p. 119.

116. See Naomi Roht-Arriaza, "Of Seeds and Shamans: The Appropriation of the Scientific and Technical Knowledge of Indigenous and Local Communities," *Michigan Journal of International Law* 17(4) (1996): 919-966; and Emmanuel Boon and Luc Hens (eds.), *Indigenous Knowledge Systems and Sustainable Development: Relevance for Africa* (Delhi: Kamla-Raj, 2007).

117. See Wadada Nabudere, "Cheikh Anta Diop" Note 77. Also see Sylvia Wynter, "But What Does 'Wonder' Do? Meanings, Canons, Too? On Literary Texts, Cultural Contexts, and What It's Like to Be One/Not One of Us," *Stanford Humanities Review* 4(1) (1995): 124-129, available at: https://web.stanford.edu/group/SHR/4-1/text/wynter.commentary.html[accessed December 9, 2019].

118. A multidisciplinary approach would attempt to solve a problem through a silo discipline but borrowing some content from another (or more) silo discipline(s). An interdisciplinary approach, is slightly better as it integrates knowledge and modes of thinking from different disciplines to solve a problem or research question.

interrelatedness of silo disciplines.[119] The development of pedagogy around decolonial thinking and transformation must therefore expose the politics behind imparting knowledge within the barricades in which traditional disciplinary boundaries operate. A fragmented approach to learning prevents students from seeing the "bigger picture" of coloniality; it creates a blind spot to the complexity and interconnectedness of knowledge, ideas and phenomena. With new types of inequalities and social stratifications developing under globalized neoliberalism, all Afro-feminist analyses must adopt a transdisciplinary approach in order to effectively challenge the dominant order.

My own journey in this respect is instructive. I began my career immersed in the traditional colonial lecture and case methods of teaching the law. Finding it unsatisfactory, I moved to an adoption of more interactive and reflective methods rooted in Clinical Legal Education (CLE).[120] I also endeavour to use feminist approaches to the law, from a Critical Legal Studies (CLS) point of view in order to expose the inherently political and colonial nature of the law.[121] Although the latter approach has proven much more enriching in a social justice context, it is still inadequate, being premised on the faulty logic that the law degree inhabits a special professional silo. For African students to appreciate the challenges our continent faces today, they cannot afford to be trained with a frog's eye view of the world; it is necessary to see the big picture of the world from the perspective of the hawk; to connect dots. This can only be done by connecting knowledge from disciplines as diverse as mathematics,

119. See Sally Godinho and Bradley Shrimpton, "Interdisciplinary Curriculum: A Sustainable Future or an Unattainable Vision in a Changing Educational Climate?" in P. Jeffrey (ed.), *Proceedings of the Australian Association for Research in Education Conference,* (Burwood, Australia: AARE, 2008), available at https://www.aare.edu.au/data/publications/2008/god08708.pdf [accessed December 9, 2019]. Also see Anne Stephens, Chris Jacobson and Christine King, "Describing a Feminist-Systems Theory," *Systems Research and Behavioral Science* 27 (2010): 553-566.

120. See Philip F. Iya, "Fighting Africa's Poverty and Ignorance through Clinical Legal Education: Shared Experiences with New Initiatives for the 21st Century," *International Journal of Clinical Legal Education* 1 (2000): 13-32.

121. Michael Peters explains the role of CLE: "Critical Legal Studies explored how the practices of legal institutions, legal doctrine, and legal education worked to buttress dominant White culture and rule of law devoid of hidden class and race interests." See Michael A. Peters, "Why is My Curriculum White?" *Educational Philosophy and Theory* 47(7) (2015): 641-646 at p. 642.

archeology, history, literature, economics, physics, religious studies, political science, medicine and so forth.

A good example of a great transdisciplinary approach is a study conducted by historian Rhiannon Stephens on marriage arrangements in Uganda over a period of twelve centuries. Stephens was able to reconstruct this past not only through archival research but also through a reliance on historical linguistic reconstructions, comparative ethnography and oral traditions.[122] So, here at least four pathways were used *via* the disciplines of history, linguistics, archeology and ethnography in a collaborative "jigsaw" fashion, to generate new insights about past complex traditions. A single discipline would have fallen on barren ground.

Many African politicians and the continent's elite have recently jumped on the neoliberal bandwagon that questions the relevance of the humanities and social sciences in African Academies.[123] They argue that not only are such courses ill-equipped to solve the "development needs" of Africa in the twenty-first century, but that the graduates of such disciplines are largely unemployable. Hence, science, technology, engineering and maths (STEM) should be promoted over the arts. Such arguments entrench the colonial discipline-siloed education system which, as discussed earlier, limits our worldview. Moreover, in this era of digital disinformation and algorithmically mediated content, the humanities and social sciences are crucial for injecting critical analyses into the development process pertaining to inequalities based on gender, race, class, sexuality, etc. A transdisciplinary approach to Africa's development must include contextual content from history, literature, art, geography, sociology, etc. Such an approach both unearths and challenges hegemonic coloniality.

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122. See Rhiannon Stephens, "'Whether They Promised Each Other Some Thing Is Difficult to Work Out': The Complicated History of Marriage in Uganda," *African Studies Review* 59(1) (2016): 127-153.

123. See e.g., President Museveni of Uganda, who vigourously defends this message at every opportunity: Damali Mukhaye, "Museveni asks universities to drop 'irrelevant' courses," *Daily Monitor,* December 12, 2019 at p. 8.; and Joshua Nahamya, "Museveni Calls for Foreign Academic Courses," *ChimpReports* (October 17, 2015), available at: https://chimpreports.com/museveni-calls-for-foreign-academic-course/ [accessed Nov 2, 2019]. Also see Damtew Teferra (ed.), *Flagship Universities in Africa* (London: Palgrave Macmillan, 2017); and Helen Lauer and Kofi Anyidoho (eds.), *Reclaiming the Human Sciences and Humanities through African Perspectives, Vol. I* (Accra: Sub-Saharan Publishers, 2012).

China offers a model example of decolonized/decolonial education where the Guangzhou University of Chinese Medicine alone boasts of 19 doctoral programmes in Chinese medicine and herbal Chinese medicine as well as 24 Masters programmes that integrate Chinese medicine with Western medicine.[124] Apart from China, the de-Westernization of the education system has been ongoing for decades in places like Japan, North Korea and Russia.[125] It is preposterous for a history curriculum in an African Academy to include a full module on the French Revolution but remain silent on the Haitian Revolution; or to learn about the Holocaust and remain silent about colonial genocides such as the 1904 German Extermination Order against the Herero and Nama people of Namibia; or to teach a Nigerian art student about Michelangelo and not Ben Enwonwu or Felix Idubor; or a reading list on astronomy to omit Indigenous astronomical knowledges à la Dr. Thebe Medupe's 2003 documentary film *Cosmic Africa*. In making the documentary film *Cosmic Africa* at the beginning of this century, Medupe and Rogers crisscrossed the length and breadth of Africa interviewing shamans, diviners, storytellers, calendar experts, chiefs, nomads, hunters, sky-lore experts, fisher people, and other knowledgeable *wananchi*. They discovered "a vast amount of untapped Indigenous knowledge, enough to make several films."[126]

Pan-Africanist scholar Ama Biney summarizes what Africa needs to do intellectually to shake itself from colonial mentality:

> The decolonial turn in development discourse necessitates not only shifting the locus of enunciation of knowledge from Europe and America as privileged epistemic sites to the Global South and Africa in particular, but new modes of thought and action in Africa are imperative. Nothing less than a fundamental epistemic rupture or intellectual revolution is required on the part of the masses of African people and progressive African thinkers. It requires a revolution in

124. Sarfo Nimoh, "Indigenous Traditional Medicine in Ghana: Tapping into an Under-Explored Resource," in Gloria Emeagwali and George Sefa Dei (eds.), *African Indigenous Knowledge and the Disciplines*, Note 43, pp. 83-94.

125. See, e.g., Akio Morita and Shintaro Ishihara, *The Japan that can Say No: Why Japan Will be First Among Equals* (London: Simon & Schuster, 1989) and Qiang Song, *China Can Say No* (Beijing: China Industry & Commerce Associated Press, 1996).

126. A. Rogers, "The Making of Cosmic Africa: The Research Behind the Film," *African Sky* 11 (2007): 19-23 at p.19.

praxis that is reflexive, that engages in a constant dialogue with theory and practice that connects with the lives of ordinary Africans and actively conscientises them.[127]

Such a decolonial turn would require us to part ways with Euro-American hegemonic paradigms and turn away from their gatekeeping processes that delegitimize and marginalize other ways of thinking and world systems.

Pedagogical Approaches

The colonial legacy that imposed Eurocentric dominance and situated it as the universal epistemological paradigm is clearly evident in current pedagogical approaches of contemporary African Academies. The importance of *how* knowledge is imparted in education systems cannot be overemphasized. Who benefits from students learning through competitive processes and from commodifying knowledge itself?[128] What politics lie behind knowledge silos that we see in independent/expert disciplines? Raymond Williams urges us to "emphasize not the ladder but the common highway."[129] The relationship between lecturers and students as well as the methods of teaching should be democratic and inclusive. In short, they should validate the voices of *all* learners. Pedagogical methods should promote cognitive holistic learning beyond dichotomized approaches and rote content knowledge. They should resonate with the learners' worldviews and beliefs.

Freire criticized the dominant teaching method where students are viewed as "empty vessels" to be filled with knowledge transmitted by their teachers.[130] The incorrect assumption

127. Ama Biney, "Decolonial Turns and Development Discourse in Africa: Reflections on Masculinity and Pan-Africanism," *Africanus* 43(2) (2013): 78-92 at p. 78.

128. See Teresa Barnes, "Politics of the Mind and Body: Gender and Institutional Culture in African Universities," *Feminist Africa* 8 (2007): 8-25.

129. Raymond Williams (Robin Gable, ed.), *Resources of Hope: Culture, Democracy, Socialism* (London: Verso, 1989 [1975]) at p. 15. Cited in W. John Morgan, "Antonio Gramsci and Raymond Williams: Workers, Intellectuals and Adult Education," in Carmel Borg, Joseph Buttigieg and Peter Mayo (eds.), *Gramsci and Education* (London: Rowman and Littlefield Publishers, 2002) at p. 241.

130. Paulo Freire, *Pedagogy of the Oppressed*, Note 45.

underlying this method is that the student lacks any knowledge and the teacher possesses all of it. Gramsci also argued that "every teacher is always a pupil and every pupil a teacher."[131] The colonial education system is set up in such a way that the participants are largely unaware of their roles as colonizer or colonized; both are caught in the grip of the "colonial relationship." It is all "hidden" in the curricula, and in the policies, textbooks, authority structures, credentialism, methods, cultural contexts and overall hegemonic discourses. Sometimes, there will be a rejection on the part of the teacher and/or the student but, overall, these pockets of resistance amount to small ripples that hardly cause a dent in the dominant and hegemonic forces.

Since the 1980s, feminist scholars on the continent have challenged orthodox pedagogies and methodologies that "disappear" the important politics of gender and sexualities, of violence and representation.[132] What, for example, does it mean for students and staff of non-conforming sexualities and gender identities to learn/work in an African Academy? Do they see, read, or hear positive images about people like themselves or are they pedagogically "disappeared"? University of Nairobi lecturer Mumbi Machera described the metaphorical "can of worms" released in the lecture room each time she introduces the topics relating to non-conforming sexualities or sexual pleasure to students.[133] Are studies in gender and sexuality integral to disciplinary instruction or are they ignored as "un-African"? Are lecturers trained to impart knowledge on gender and sexuality? The only campuses on the continent that have devised policies to address the needs and interests of homosexuals and transgendered individuals are in

131. Antonio Gramsci, *Selections from the Prison Notebooks* (Quintin Hoare & Geoffrey Nowell Smith, eds.), (London: Lawrence & Wishart, 1971) at p. 350.

132. See e.g., Yvonne Vera, *Under My Tongue* (Harare: Baobab Books, 1996); Amina Mama, "Restore, Reform, but do not Transform: The Gender Politics of Higher Education in Africa," *Journal of Higher Education in Africa* 1(1) (2003): 101–125; Jane Bennett and Vasu Reddy, "Feeling the disconnect: Pedagogies of Gender and Sexuality in South African Higher Education," *International Journal of Sexual Health* 21(4) (2009): 239–252; Mansah Prah, "Creative Methodologies/Pedagogical Approaches to Teaching Sexuality in an African Context," in Sylvia Tamale (ed.), *African Sexualities: A Reader*, pp. 589-605 (Oxford: Pambazuka Press, 2011); and Mary Hames, "Embodying the Learning Space: Is it Okay if I Bring my Sexuality to Class?" *Feminist Africa* 17 (2012): 62-81.

133. Mumbi Machera, "Opening a Can of Worms: A Debate on Female Sexuality in the Lecture Theatre," in Signe Arnfred (ed.), *Re-Thinking Sexualities in Africa*, pp. 157-170 (Uppsala: Nordiska Afrikainstitutet, 2004).

South Africa. But even there, what is on paper does not usually find the same implication in reality.[134] However, a 2009 survey conducted on 22 South African universities revealed that a new trend was taking root whereby diverse gender and sexualities courses were being taken seriously.[135] Efforts must be taken to close what South African scholar Mary Hames terms "pedagogic distance," not only between lecturer and student, but also between students that perpetuate injustices.[136]

Liberatory teaching methods should hone the critical thinking skills of learners. Unlearning or conscientisation not only requires exposure to knowledge and understanding of the historical processes of colonial domination and Western modernity, but also to the gendered ordering of human relations. Such histories would unlock the concealed truths about the Western modernity project which was achieved at the great expense of Indigenous populations. Unlearning entails appreciating Indigenous knowledge systems and their ways of being, which were subordinated by coloniality. It means utilizing multivocal literature including grey literature, oral "documents" such as orations, stories, songs, folklores, proverbs, riddles, games, artworks and ceremonies. Educators and learners need open access to all published works because no individual can claim to be the exclusive producer of knowledge. We all build on existing knowledge and restate old arguments using different words. We base our conclusions on research data given to us by others, so we do not "own" that knowledge. Publishers should not make profit off academic publications because this is public knowledge. Unlearning also means that we consciously and constantly engage in self-reflection, questioning all assumptions and prejudices underlying colonially constructed "truths." Furthermore, unlearning prompts us not to think in unitary categories or frameworks but to be aware of intersectional matrices in order to unearth hidden workings of oppression. Finally, it entails resisting the perpetuation of essentializing stereotypes

134. Nonhlanhla Mkhize, Jane Bennett, Vasu Reddy and Relebohile Moletsane, *The Country we Want to Live in: Hate Crimes and Homophobia in the Lives of Black Lesbian South Africans* (Cape Town: HSRC Press, 2010).

135. Jane Bennett and Vasu Reddy, "Feeling the disconnect," Note 132 at p. 244.

136. Mary Hames, "Embodying the Learning Space," Note 132 at p. 71.

about colonized people based on race, gender, class, sexuality, etc. Conscientisation through dialogue between the lecturer and the students is a process of two-way learning, knowing and theorizing about the shared experiences.[137]

It is imperative to use multiple literacies to engage students. Studies have demonstrated that students learn better through decolonial storytelling, for example, than via the passive lecture method.[138] Storytelling is a common method of transferring knowledge within Indigenous knowledge systems as are participatory hands-on learning, community-based learning and collaborative enquiry. Kenyan philosopher Henry Odera Oruka advocated the use of methods that seek wisdom from traditional sages, male and female, who possess unique insights on fundamental human themes such as the nature of time, freedom, death, education and the existence of god.[139] Rhythmic songs, for example, should be a standard tool for teaching in Africa where poetry and song are an integral element of people's cultural history.

A few Academies on the continent have embarked on serious decolonial programmes. The Marcus Garvey Pan-Afrikan University (MPAU) founded by Professor Wadada Nabudere in eastern Uganda is one such example. In addition to on-campus learning within the four walls of a lecture room, the university set up off-campus centres where students engage with local communities. The university's radical curricula, based on the philosophy of Afrikology, sought to reinstate and mainstream Indigenous knowledge systems that were distorted by Greece and Rome.[140] Through the Institute for Pan-African Thought and Conversation (IPATC), the University of Johannesburg has radically transformed its curriculum, placing Africa at its epistemic centre.

137. Donaldo Macedo, "Introduction" in Paulo Freire, *Pedagogy of the Oppressed*, Note 45. Also see Madina Tlostanova and Walter Mignolo, *Learning to Unlearn: Decolonial Reflections from Eurasia and the Americas* (Columbus, OH: Ohio State University Press, 2012).

138. Edward Shizah, "Indigenous Knowledge Systems" Note 114.

139. Oruka distinguished the philosophical sage from the folk sage. See Henry Odera Oruka, *Sage Philosophy* (Nairobi: Acts Press, 1991). Also see Pius Mosima, "Henry Odera Oruka and the Female Sage: Re-Evaluating the Nature of Sagacity," in Jonathan Chimakonam and Louise du Toit (eds.), *African Philosophy and the Epistemic Marginalization of Women*, pp. 22-41 (New York: Routledge, 2018).

140. See Dani Wadada Nabudere, *Afrikology, Philosophy and Wholeness: An Epistemology* (Pretoria: Africa Institute of South Africa, 2011).

Unfortunately, many of such efforts on the continent experience serious pushback from the national regulatory bodies in charge of higher education and those whose minds continue to be locked within the cage of coloniality.[141] Walter Rodney criticized such "lackeys of capitalism" and stressed the importance of forging a "seamless connectivity" between the university, *wananchi* and activism.[142]

Finally, using Indigenous languages as a medium of learning is crucial in the decolonial process as colonial languages alienate and silence many African students in our Academies. Currently, the medium of instruction in most African universities follows the language of the colonizing power of the country where it is located. In most cases these Western languages act as a barrier to students' learning. Munzali Jibril reports with concern that English proficiency among Nigerian students is on a sharp decline, adversely affecting the communicative competencies and ultimately, their cognitive absorption.[143] The situation in other African countries is not very different. Mastery and fluency of a language affect comprehension, which means that many graduates from African Academies are half-baked, primarily on account of lacking skills of comprehension, coupled with the alienating effects of the imperialist linguistic configuration.[144] Teaching in one Indigenous language can be challenging in African Academies whose states were patched together without any sensitivity to homogenizing criteria by the Berlin imperialists. As far back as 1966,

141. For example, the future of MPAU is uncertain as the Ugandan National Council of Higher Education has not granted official accreditation to the institution. See Bwesigye Bwa Mwesigire, "Marcus Garvey is Alive in East Africa," *Chimurenga*, April 5, 2016, available at: http://chimurengachronic.co.za/marcus-garvey-is-alive-in-east-africa-2/ [accessed October 11, 2019].

142. See Wazir Mohamed, "Potency of Walter Rodney's Ideas 38 Years After Assassination," *Pambazuka News*, (June 15, 2018).

143. See Munzali Jibril, "Nigeria," in Damtew Teferra and Philip Altbach (eds.), *African Higher Education*, Note 5, pp. 492-99 at p. 496. He reports that in the 1999 School Certificate Examination conducted by the West African Examinations Council, for instance, only about 10 percent of all students obtained a credit pass in the English language.

144. See Birgit Brock-Utne and Rodney Kofi Hopson (eds.), *Languages of Instruction for African Emancipation: Focus on Postcolonial Contexts and Considerations* (Dar es Salaam: Mkukina Nyota Publishers, 2005). Also see Neville Alexander, "The Role of African Universities in the Intellectualisation of African Languages," *Journal of Higher Education in Africa* 5(1) (2007): 29-44.

during the Fourth Symposium of the East African Academy held at Makerere University College in Kampala, Uganda, Chiraghdin strongly argued for promoting Kiswahili as the official academic language for East African Academies.[145] Sadly, only Tanzania managed to overcome the multi-linguistic barrier by adopting Kiswahili as its national language. But even in Tanzania, Kiswahili is only used as a medium of instruction in pre-university education; the Academy returns to the colonial language of English.[146]

Kenya has attempted to follow in the same footsteps as its southern neighbour with Kiswahili. Thus, Article 7 of the 2010 Constitution (National, official and other languages) stipulates that the official languages of the Republic are Kiswahili and English and the State is obligated to "… promote and protect the diversity of language of the people of Kenya." It further stipulates that the State shall "… promote the development and use of Indigenous languages, Kenyan Sign language, Braille and other communication formats and technologies accessible to persons with disabilities."[147]

Texts can be published in local languages with translations of a homogenizing language.[148] But given the period exceeding a century when the growth of Indigenous languages in the intellectual tradition was truncated and frozen by colonialism, it will probably take decades to develop Indigenous scholarly texts. But it is not impossible. Mahmood Mamdani points to the example of Afrikaans, which used to be known as "kitchen Dutch" but within half a century had been developed into "the bearer of an intellectual tradition" in South Africa. Mamdani explains that:

> That development would not have been possible without a vast institutional network – ranging from schools and universities to

145. See Reuben J. Olembo, "East African Academy," *Science* 155(3769) (1967): 1581-1589 at p. 1584.

146. This is also true for Somalia, Ethiopia and the Sudan whose primary and post-primary instruction is Indigenous languages, but whose universities revert to Euro-languages. See Alamin Mazrui, "The World Bank, the Language Question and the Future of African Education," *Race and Class* 38(3) (1997): 35-48.

147. Article 7(3)(b) of the Constitution of the Republic of Kenya, 2010.

148. See for example, Chike Jeffers (ed.), *Listening to Ourselves: A Multilingual Anthology of African Philosophy* (New York: State University of New York Press, 2013). This anthology has a collection of chapters written in six Indigenous African languages (with accompanying English translations)—Akan, Wolof, Amharic, Dholuo, Gikuyu and Igbo.

> newspapers, magazines and publishing houses, and more, all resourced through public funds. This vast affirmative action programme lifted Afrikaans from its status as a folkloric language to become a language of science and scholarship, high culture and legal discourse in a very short time span. It is no exaggeration to say that Afrikaans represents the most successful decolonizing initiative on the African continent.[149]

It is paradoxical that Afrikaans is selected as Mamdani's example of a "successful decolonizing initiative," given that it was the epitome of a colonizing language, not only in terms of origin, but also in the place it subsequently occupied within the apartheid scheme of things in South Africa.[150] Indeed, the attempt to impose Afrikaans as a language of instruction in South African secondary schools ignited the Soweto Uprising of 16th June 1976—an event largely recognized as one of the major sparks which spurred the eventual liberation of the country.

Nevertheless, the important point made by Mamdani is that Africa needs to focus on the family of different dialects spoken on the continent by similar sub-groups in the bid to develop core Indigenous languages. Today, many widely spoken languages such as Arabic and Chinese are all clusters of various related dialects.[151] In his 1945 booklet *Nguni and Sotho: A Practical Plan for the Unification of the South African Bantu Languages*, Jacob Nhlapo attempted to take on this challenge.[152] At the same time, post-apartheid South Africa has adopted a different strategy through the recognition of eleven national/official languages.

There is also the "nativized" lexicology along the West African coast that is a subversion of the colonial languages.[153] Dialects of

149. Mahmood Mamdani, "Decolonising Universities," in Tor Halvorsen, Kristin Skare Orgeret and Roy Krøvel (eds.), *Sharing Knowledge, Transforming Societies: The Norhed Programme 2013-2020*, pp. 48-67 (Cape Town: African Minds, 2019) at p. 61.

150. See Lilly Majorie, "Language Policy and Oppression in South Africa," *Cultural Survival Magazine* (March 1982), available at: https://www.culturalsurvival.org/publications/cultural-survival-quarterly/language-policy-and-oppression-south-africa [accessed November 10, 2019].

151. Mahmood Mamdani, "Decolonising Universities," Note 149 at p. 62.

152. See Jacob Nhlapo, *Nguni and Sotho: A Practical Plan for the Unification of the South African Bantu Languages* (Cape Town: African Bookman, 1945).

153. See Nick Faraclas, *Nigerian Pidgin* (London, Routledge, 1996); Magnus Huber, *Ghanaian Pidgin English in its West African Context: A Sociohistorical and Structural Analysis* (Amsterdam: John Benjamins Publishing Co., 1999); Charles Gilman, "Cameroonian

"Pidgin" English are so widely spoken in this part of Africa that in 2017 the British Broadcasting Corporation (BBC) introduced a radio service in that language.[154] *Quartz Africa* Magazine reports that, "Even though Pidgin hasn't got the official status of a recognized language anywhere, it's widely spoken across West Africa. Between three and five million Nigerians use it as their first language, while a further 75 million have it as their second language."[155] Versions of Portuguese-based Creole are spoken in Guinea, Guinea-Bissau, Cape Verde and in Casamance in southern Senegal.[156] In this way, languages that were initially "colonial" have been indigenized, much in the same way as the proselytizing religions—Christianity and Islam—have today taken on much more Africanized hues than was the case when they were initially introduced. As a final point on this matter, there is the Kenya case of Sheng—otherwise known as "Swahili-English" which is the preferred framework of discourse for the urban youth.[157]

Research Politics

The Academy is a hub of scholarly research which powerfully shapes discourse and is heavily relied upon for public policy and governance. Do the theoretical connotations of the research conducted in your university perpetuate colonial concepts, stereotypes, imaginaries and cover-ups? Chinua Achebe warns

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Pidgin English, a Neo-African Language," in Ian Hancock (ed.), *Readings in Creole Studies*, pp. 269-80 (Amsterdam: John Benjamins Publishing Co., 1979); and Eric Anchimbe, "Pidgin Goes Public: Urban Institutional Space in Cameroon," in Cecile Sandten and Annika Bauer (eds.), *Re-Inventing the Postcolonial (in the) Metropolis*, pp. 379-400 (Amsterdam & New York: Rodopi, 2004).

154. See Edosa Edionhon, "West Africa's Pidgins Deserve Full Recognition as Official Languages," *Quartz Africa*, (October 14, 2018), available at: https://qz.com/africa/1423524/west-africas-pidgin-can-be-official-language-bbc-shows/ [accessed Nov 11, 2019].

155. Ibid.

156. See Alain Kihm, *Kriyol Syntax: The Portuguese-Based Creole Language of Guinea-Bissau* (Amsterdam: John Benjamins Publishing Co., 1994).

157. See Ali Mazrui, "Slang and Code-Switching: The Case of Sheng in Kenya," in Rose Marie Beck, Thomas Geider & Werner Graebner (eds.), *Afrikanistische Arbeitspapiere*, 42 (1995): 168-179. Also see Laura Dean, "Street Talk: How the Urban Slang of Nairobi Slums is Becoming the Language of the People," *Slate* (November 01, 2013), available at:https://slate.com/news-and-politics/2013/11/sheng-is-becoming-a-kenyan-language-how-the-urban-slang-of-nairobi-slums-is-spreading.html [accessed Nov 11, 2019].

African intellectuals against playing the indulgent games of words and jargonistic terms that lead us to *cul-de-sac* dead ends. He likens them to "Outsiders Who Weep Louder than the Bereaved" in terms of outperforming the Western originators of postmodern terms.[158]

Quite a lot has been written to discredit the dominant positivist paradigm in both the "hard" and social sciences that emphasizes objectivity, dichotomizing subject and object. It depicts social reality as being "out there" and calls for delusional "scientific" approaches of obtaining such reality through unrealistic detachment and objectivity. It presupposes abstract researchers devoid of history and unaffected by culture, gender and cultural structures. Aníbal Quijano argues that such an approach is vital for capitalism as "measurement, quantification, externalization (or objectification) of what is knowable with respect to the knower" is important in order "to control the relations among people and nature and among them with respect to it, in particular the property in means of production."[159] They investigate from the premise of dichotomized either/or categories which "misconstrue subjectivity, occlude interlocking power dynamics, and distort how domination and subordination (or privilege and oppression) operate."[160] Moreover, they adopt one-dimensional models of individuals, social groups, rights and power studied through ideological approaches of linearity, (colonial) rationality and predictability.

These colonial/patriarchal ways of relating to the world are problematic as they tend to produce skewed and biased knowledge. It is clear, for example, that any research project that ignores gender politics will only produce results of limited scope and truncated findings. As Jane Bennett points out, post-colonial scholars read the colonial/neocolonial project as inherently gendered and sexualized.[161] Therefore, in "mining" the wealth of Indigenous knowledges and seeking to undo the multiple levels of coloniality,

158. Chinua Achebe, *Home and Exile* (New York: Anchor, 2000), pp. 73-105. Also see Ben Halm, "Atalanta's Apples: Postcolonial Theory as a Barrier to the 'Balance of Stories'," *Research in African Literatures* 34(4) (2003): 155-173 at p. 162.

159. Aníbal Quijano, "Colonialidad del Poder y Clasifcacion Social," *Journal of World Systems Research* 5(2) (2000): 342-388 at p. 343.

160. Vivian May, *Pursuing Intersectionality*, Note 54, at p. 7.

161. Jane Bennett, "'Fashionable Strategies': Travels in Gender and Sexuality Studies," in Jane Bennett and Sylvia Tamale (eds.), *Research on Gender and Sexualities in Africa*, pp. 1-14 (Dakar: CODESRIA, 2017) at p. 3.

we must adopt ethical non-positivist intellectual paradigms that acknowledge subjective interpretation of reality and are commensurate with Indigenous (and feminist) knowledge systems that are nonlinear, nonrational and value-laden. Methodology itself must be conceptualized as "a political process, a 'space' in which complex issues of context, voice, ethics and ideological depth are played out."[162]

South African scholar Pumla Gqola urges the deployment of innovative and subversive critical tools in African research and training, including resorting to visual arts, to articulate "difficult" topics like sexuality.[163] Critical approaches that challenge binary logics and analyze power and status inequalities need to be replaced with intersectional lenses for social transformation.[164] The concept of intersectionality is heuristic in nature in that it enables people to understand specific problems pertaining to their experiences of inequity and injustice in effective and practical ways.[165] As a transformative strategy and an analytic concept, it is key to transnational afro-feminist politics as it offers us the tools to think "within and across communities" for a "range of differently situated women."[166] Vivian May urges serious recourse to the intersectional approach in our research in order to engage with, question and understand systems of domination, contending that "intersectionality seems to risk misrecognition on nearly every front, whether co-opted by the state, corporatized in the neoliberal Academy, or regulated by feminists committed to intersectionality but who inadvertently norm it to disciplinary logics,

162. Sylvia Tamale, "Researching and Theorising Sexualities in Africa," in Sylvia Tamale (ed.), *African Sexualities*, Note 132, pp. 11-36 at p. 29.

163. Pumla Dineo Gqola, "Through Zanele Muholi's Eyes: Re/Imaging Ways of Seeing Black Lesbians," in Sylvia Tamale (ed.), *African Sexualities*, Note 132, pp. 622-629. Also see Dorothy Aken'ova, "A Radical Technique to Teach Sexual Rights," in the same volume, pp. 630-632.

164. See Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics," *University of Chicago Legal Forum* 1989 (1989): 139-168; and Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color," *Stanford Law Review* 43(6) (1991): 1241-1300.

165. Kimberlé Crenshaw, "Postscript," in Helma Lutz, Maria Vivar and Linda Supik (eds.), *Framing Intersectionality: Debates on a Multi-Faceted Concept in Gender Studies*, pp. 221-234 (Farnham, UK: Ashgate, 2011).

166. Uma Narayan, *Dislocating Cultures: Identities, Traditions, and Third World Feminism* (New York: Routledge, 1997) at p. 153.

methodological conventions, or gender-primary theoretical premises. Intersectionality can be used in interrogative, creative, and visionary ways, not just as a descriptive or demographic factor, as is too often the case."[167] May's critique is spot on, particularly for those of us who set out to apply intersectionality to our analyses but are constantly pulled back by the gravitational force of hegemonic research norms. Indeed, it must take our conscious commitment to resist using the master's tools in dismantling his house in the decolonial project.[168] Intersectionality is attractive to the decolonial project because it offers the tools to "decipher" power, identify "gaps, inconsistencies, opacities and discontinuities and insists that such omissions or silences be treated as (potentially) meaningful and significant, not just as obstacles to work around or anomalies to set aside."[169]

Neutral knowledge does not exist. Knowledge production or what and how we understand "reality" and "truth" is an extremely political process. What is "reality" or "truth"? How do we know this "reality"? Is there only one reality or are there many of them? Are these "realities/truths" universal? In the world we live in today, knowledge structures are mainly shaped by colonial ontology and epistemology. Most approaches to these philosophical questions are answered by mainstream colonial values and colonial ways of knowing and being. Such approaches reinforce colonial hegemonic relations. In this era of bot-algorithms the sky is the limit for constructing and sustaining such master narratives. Intersectional conceptualizations challenge dominant logics and conventional models of understanding; to echo May again: "intersectionality is an *epistemological project* that contests dominant mindsets; an *ontological approach* that accounts for complex subjectivity and offers different notions of agency; a radical *political orientation* grounded in solidarity, rather than sameness, an organizing principle; and a *resistant imaginary* useful for intervening in conventional historical

167. Vivian May, *Pursuing Intersectionality,* Note 54, at p. 95. See the discussion of how the intersectional approach can be deployed in research using "matrix thinking" in Chapter Three of this book.

168. Audre Lorde, "The Master's Tools Will Never Dismantle the Master's House." See Audre Lorde, *Sister Outsider,* pp. 110-113 in *Sister Outsider: Essays and Speeches by Audre Lorde* (California: Crossing Press, 1984).

169. Vivian May, *Pursuing Intersectionality,* Note 54 at p. 227.

memory and prevailing social imaginaries."[170] [emphasis in original]

Decolonial research would entail processes that value, reclaim and foreground Indigenous voices and ways of knowing.[171] Women's experiences, perceptions and complex subjectivities would be taken seriously in knowledge production. Examples can be taken from the important and growing transdisciplinary scholarship on African sexualities that has emerged in the last twenty years.[172] Apart from critiquing colonial research paradigms and methods, decolonial feminist research would question and deconstruct the very premise on which concepts are based, its underlying assumptions, values and motivations. It would build synergies between various knowledge systems in a non-hierarchical fashion. Tuhiwai Smith cautions against researchers who view themselves as authoritative representatives of the Other with their findings universalized while marginalizing the voices of the Other. She further critiques the practices of history, writing and theory making, exposing their imperialist bias.[173]

Finally, Colonialism maintains a stranglehold on knowledge production through an elaborate publication infrastructure largely based in the global North which plays the role of gatekeeping on what qualifies as "legitimate" publishable knowledge. Growth and development of African academics is tied to a biased system of peer reviewing that promotes Eurocentric orthodoxies and hierarchies.

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170. Ibid. at p. 12.

171. Beth Swadener and Kegendo Mutua, "Decolonizing Research in Cross-Cultural Contexts," in Amos Hatch (ed.), *Early Childhood Qualitative Research*, pp. 185-206 (New York: Routledge, 2007). Also see Susan Harding, "The Method Question," *Hypatia* 2(3) (1987): 19-35.

172. See e.g., Signe Arnfred (ed.), *Re-Thinking Sexualities in Africa*, Note 133; Akosua Ampofo and Signe Arnfred (eds.), *African Feminist Politics of Knowledge*, Note 24; Melissa Steyn and Mikki van Zyl (eds.), *The Prize and the Price: Shaping Sexualities in South Africa* (Cape Town: Human Sciences Research Council, 2009); Sylvia Tamale (ed.), *African Sexualities*, Note 132; Sokari Ekine and Hakima Abbas, *Queer African Reader* (Oxford: Pambazuka Press, 2013); Jane Bennett and Charmaine Pereira (eds.), *Jacketed Women: Qualitative Research Methodologies on Sexualities and Gender in Africa* (Tokyo: United Nations University Press, 2013); Charmaine Pereira (ed.), *Changing Narratives of Sexuality: Contestations, Compliance and Women's Empowerment* (London: Zed Press, 2014); and Jane Bennett and Sylvia Tamale (eds.), *Research on Gender and Sexualities in Africa*, Note 161.

173. Linda Tuhiwai Smith, *Decolonizing Methodologies* (2nd Ed.) (London: Zed Books, 2012). This text should be a compulsory read for those interested in a decolonized research agenda.

Moreover, most of the research undertaken on the continent is shaped and moulded by those outside its borders.[174] Such gatekeeping practices translate, in part, into Africa contributing only 1.25 percent of global knowledge production.[175] Peer review processes are integral to research and publication, but when they are used politically to filter what gets to be read by the public, they turn into instruments for entrenching hegemonic orthodoxies. Indeed, they work to maintain coloniality of knowledge.[176] Hence, the Afro-feminist decolonial project must not only challenge colonial research methods but also other tools that impinge on our potential for knowledge production on the global stage. Such a decolonial turn can be achieved through developing our own publication outlets, with our own peer review processes, producing Afrocentric knowledge that will liberate us from Eurocentrism.

Inclusiveness of Diversities

The Western university model was designed to limit access to higher education to a few elites who were taught in the colonial language under close supervision to what they were exposed to.[177] Decolonization and decoloniality require that we are more tolerant of diversity and pluralism. Here, we are not talking about cosmetic or tokenistic approaches to diversity. Achille Mbembe refers to it as the "democratization of access" whereby "the doors of higher education should be widely opened."[178] However, as pointed out by Jane Bennett, Mbembe's democratized access seems to be envisioned outside the politics of gender and sexualities within the

174. Damtew Teferra and Philip G. Altbach, "African Higher Education" Note 5 at p. 39. Also see Sylvia Tamale, "Researching and Theorising Sexualities in Africa," Note 162.

175. M. P. Sebola, "Peer Review, Scholarship and Editors of Scientific Publications: The Death of Scientific Knowledge in Africa," *KOERS Journal* 83(1) (2018): 1-13.

176. See Aníbal Quijano, "Coloniality and Modernity/Rationality," *Cultural Studies* 21(2-3) (2007): 168-178. Also see Sabelo Ndlovu-Gatsheni, "Decoloniality as the Future of Africa," *History Compass* 13(10) (2015): 485–496.

177. See Damtew Teferra and Philip Altbach, "Trends and Perspectives in African Higher Education," Note 5 at p. 4.

178. Achille Mbembe, "Decolonizing the University: New Directions," *Arts and Humanities in Higher Education* 15(1) (2016): 29-45 at p. 30.

Academy.[179] Is there an affirmative action programme in your university to achieve *both* quantitative and qualitative equity? For example, are there plans to incorporate historically disadvantaged and alienated groups such as women, people of colour, LGBTIQ, the impoverished at all levels (administration, student, lecturers, staff)? What about academic support programmes to counter the effects of schooling deficits? When the demographics reflect those of the wider population, do the people that populate the university "own" the space or do they feel out of place? In discussing decolonization of the Academy, Dei speaks of "voice affirmation, authenticity of selves, epistemic saliency" of the experience of the colonized populations.[180] The Academy should recognize the intellectual agency of colonial subjects, and the validity of learning beyond oneself and the self-referential.

The decolonization/decolonial project must not parochially focus on the damage that racist ideologies and practices have done to African Academies, but also be critical of the other related '-isms' created by colonial encounters and inequities. In particular, decoloniality must pay attention to all systems of oppression that intersect with racism including gender, socioeconomic status, age, disability and so forth. The South African "fallist" movements, for example, were criticized by feminists for their militarized hyper-masculinity and homophobic overtones, which prompted banners such as the one that declared, "Dear History: This revolution has women, gays, queer and trans. Remember that."[181] Serah Kasembeli, a Kenyan student at Stellenbosch University, also tells the story of "the many histories of decolonization across the African continent," when she details the xenophobic violence and othering that she and her non-South African fellow students experienced even as their South African counterparts agitated for their own inclusivity and

179. Jane Bennett, " 'Disappearance' and Feminist Research in the South African Academy of Humanities," *Arts & Humanities in Higher Education* 15(1) (2016): 94-106 at p. 96.

180. George Sefa Dei, "Indigenizing the School Curriculum: The Case of the African University," in Gloria Emeagwali and George Sefa Dei (eds.), *African Indigenous Knowledge and the Disciplines*, Note 43, pp. 163-178 at p. 166.

181. Shireen Hassim, "Critical Thoughts on Keywords in Gender and History: An Introduction," *Gender and History* 28(2) (2016): 299–306 at pp. 302-303. Also see Wanelisa Xaba, "Challenging Fanon: A Black Radical Feminist Perspective on Violence and the Fees Must Fall Movement," *Agenda* 31(3-4) (2017): 96-104 at p. 101.

decolonization.[182] Their experiences as the African-Other (*makwerekwere*) in that particular "decolonial moment" of the fallist movements illuminate the layeredness, complexities and contradictions that beleaguer the African decolonization/decolonial project. It also highlights the precariousness that encircles Pan-Africanism.

The profile of the Academy must reflect the larger condition of the society within which it is situated. The ideals of the African university should not be based on the tradition, "I am because you are not" but rather, on the non-colonial ethos "I am because we are." Decolonial processes are about us, as Africans, as women, re-centring, re-humanizing, reconstructing and resisting. The decoloniality of African Academies and education systems would ultimately deal a significant blow to imperialism, racism and national chauvinism.

182. Serah Namulisa Kasembeli, "The South African Student #fallist Movements: Xenophobia and the Impossibility of Including the African 'Other'," *Journal of African Cultural Studies*, (2019), available at: https://www.tandfonline.com/doi/full/10.1080/13696815.2019.1694495 [accessed January 25, 2020].

8

Decolonizing Family Law: The Case of Uganda

Our breath will become
Someone else's story
It will scamper away
To create other lives
In distant places
Unless we whistle the energy
of our melodies
Into our children
For their children.
—Susan Kiguli[1]

One of the litmus tests for assessing the status of women in any political economy is its family law.[2] Hence, analyzing the position of women within the institution of the family is extremely important. Ahistorical, decontextualized approaches to family law would, for example, fail to reveal the contribution of women's domestic labour to capitalist accumulation; their exploitation as wage labourers;

1. From the poem "Shifting Stories," *Home Floats in a Distance* (Heidelberg, Germany: Afrika Wunderhorn, 2012) at p. 54.

2. Radhika Coomaraswamy, "To Bellow Like a Cow: Women, Ethnicity and the Discourse of Rights," in Rebecca Cook (ed.), *Human Rights of Women: National and International Perspectives*, pp. 39-57 (Philadelphia: University of Pennsylvania Press, 1994).

their role as a labour reserve; and the role of the law in promoting, protecting and reifying the heteropatriarchal family.

Modern law in the African context is a product of colonialism. Indeed, juridical technologies played a crucial role in the development and success of the colonial project. The transplantation of the European legal system along with its liberal jurisprudence to Africa was packaged by the colonialists as part of their "modernizing" and "civilizing" mission in Africa. As we saw in chapter five, the legal orders that existed prior to colonialism were undermined, truncated and reconstituted, subordinating them to the imported "modern" laws. Liberal positivist laws were also tied to the economic interests of capitalism, despite their pretensions to objectivity and universal validity. As Karen Hansen argues, "Consolidating colonial rule required the colonizers to contain African women and men on terms unfamiliar to them, imposing Western notions of household organization and gender on local conceptualizations, and to instill new regimens of wage labour and housewifery, as well as notions of pride, property and responsibility."[3]

Among the significant developments introduced by the colonialists when Uganda became a British protectorate in 1894 was the conceptual and legal separation of state law from personal law. Thus, laws relating to commerce, land and international relations were corralled off to the public realm while those governing the family were placed under the label "private law." It resonated with liberalism's dualistic paradigm. The manufactured reason for separating the domestic family was the need to shield it from any kind of state intrusion. The actual reason was to create and maintain heteropatriarchal-capitalist conditions where male "heads of the family" took charge of domesticated women whose primary role was to engage in biological and social reproduction. Prior to colonial legalities and ideologies of domesticity, there was no hardline material or conceptual separation between the public and the domestic spaces. Women worked inside and outside the home; the home was "both an enclosed space and a political

3. Karen Hansen, "Introduction: Domesticity in Africa," in Karen Hansen (ed.), *African Encounters with Domesticity*, pp. 1-36 (New Brunswick, NJ: Rutgers University Press, 1992) at p. 5.

economy."[4] Colonial efforts to reshape spatial arrangements, reassign divisions of labour and forge new authorities within the family were all geared towards constructing an economic/juridical framework for the swift and smooth exploitation of the colonies. The public/private distinction is a historical construct specific to the Western form of modernity.[5] It operates to engineer a gendered division between the sphere of the family from the larger political and economic order. Such distinction acts as an enabler for women's subjugation and the smooth operation of the heteropatriarchal-capitalist system. Hence, the introduction of colonial written laws and according them a superior status to the uncodified Indigenous laws had far-reaching repercussions on the lives of the colonized. The "living" forward-looking aspects of Indigenous laws were compromised by backward-looking colonial doctrines such as precedent and judicial notice.

As a student of law in the early 1980s, family law was one of my favourite courses because, unlike classes such as contracts or torts, it touched on familiar issues that one could easily relate to. However, I quickly noticed that the teaching was very technical and rules-oriented and therefore uninspiring. We were taught about the legal requirements for contracting a marriage, the requirements for a legal divorce and the implications of being in a domestic relationship with a spouse and children. But there was no discussion of the different contexts—historical, political economy, gender relations or even human rights—within which the law operated. Instead, the professor took us through the Black letter rules as laid out in the statutes and cases, constructing the "ideal" family as a natural, ahistorical and God-given entity that was beyond questioning. The sanctity of marriage and the family was firmly protected by the law. He taught the law with various underlying assumptions that were never examined, questioned or even challenged in the lecture room. Students were left to absorb it all, absent scrutiny and discussion of all the inconsistencies,

4. Ibid. at p. 3; also see Sylvia Tamale, "Gender Trauma in Africa: Enhancing Women's Links to Resources," *Journal of African Law* 48(1) (2004): 50-61.

5. See Peter Haldén, "Fundamental but not Eternal: The Public–Private Distinction, From Normative Projects to Cognitive Grid in Western Political Thought," *Small Wars & Insurgencies* 24(2) (2013): 211-223; and Shazia Qureshi, "Feminist Analysis of Human Rights Law," *Journal of Political Studies* 19(2) (2012): 41-55.

contradictions, double standards and paradoxes embedded in the law. Despite the pervasiveness of domestic violence within the family setup, the topic was never even given space in the family law course outline beyond its scanty acknowledgment as a ground for divorce (euphemistically referred to as "cruelty").

This chapter uses family law in Uganda as a case study to demonstrate how colonial influences—through the mechanism of law—shaped an institution that is deeply rooted in a people's history and tradition. The specific context of Uganda may differ from other African contexts but the broad ways that colonialism transformed Africa's legal systems and reshaped the continent's gender relations and socioeconomic landscapes is very similar. The first section sets the stage by conceptualizing the family institution to reveal its heteropatriarchal character and its links to the capitalist economic system. Then section two briefly introduces the laws that govern the family institution in Uganda at the international, regional and national levels. Next, we step back in history to take a glimpse of family arrangements prior to the arrival of Europeans before discussing the current family structures in today's Uganda. The fourth part analyzes some of the attempts that have been undertaken by the women's movement in Uganda to challenge and engage with the structural inequalities in family law through legal means. The chapter concludes with a brief exposé of the limits of officialist approaches to gender justice, offering some suggestions for changing our advocacy strategies.

Conceptualizing the Heteropatriarchal Family

One of the first "truisms" which students of family law in Uganda encounter in the lecture room is the constitutional provision which declares: "The family is the natural and basic unit of society and is entitled to protection by society and the State."[6] It echoes similar provisions in international and regional treaties. That seemingly innocuous statement is so loaded with different interpretations that a critical professor could spend the rest of the semester simply

6. Objective XIX of the Preamble to the 1995 Constitution of the Republic of Uganda. Also see Article 31 of the Constitution on the rights of the family.

unpacking its various components and bringing to light the subtle and hidden interests behind its text: What type of family are we talking about? What is so "natural" and "basic" about the legally sanctioned family structure? What is so important about the institution of the family that society and the state must guard jealously? What ideology underpins such a declaration? What is the origin of the declaration? How does the reality differ from the ideal?

Needless to say, the family is extremely important as it is the cornerstone for the production and reproduction of society and its norms.[7] For this reason, the institution attracts legal and formal status. The law (i.e., civil, customary and religious) arranges the institution of the family through several power structures for specific purposes—primarily economic/extractive, but also political and social. The prism by means of which the law legitimizes the family and enshrines rights to its members does not necessarily match some family forms that many Ugandans relate to on the ground. For example, while the 2002 National Population and Housing Census revealed a 60 percent increase of cohabiting couples among Ugandans, the law does not recognize such living arrangements as "married."[8] Hence, not only do millions of cohabiting couples live outside the law, but they also do not qualify for any legal benefits that come with marital status (e.g., health insurance, inheritance rights, etc.). Other individuals who are legally excluded from the institution of the family include same-sex couples.[9]

In most African states, Christian and Islamic laws have been effectively domesticated. For instance, there is an overlap between some beliefs of the Abrahamic religions of Christianity and Islam and legal principles in family law which promote female deference to men, the legal oneness of husband and wife, the condemnation

7. The extent to which our understanding of capitalist economies and the gendered colonial hetero-patriarchal nuclear Christian family are connected cannot be overemphasized. The law operates to invisibilize such link, re-couching it in moral terms such as sanctity, inviolable, nationhood, etc.

8. In 2013, the Uganda Women Parliamentarians Association (UWOPA) called for a separate law that recognizes cohabitation as a form of marriage. See Henry Sekanjako and Joyce Namutebi, "Women MPs want separate law on cohabitation" *New Vision*, March 9, 2013.

9. Article 31 (2)(a) of the 1995 Constitution (as amended) prohibits "marriage between persons of the same sex."

of adultery and abortion,[10] as well as sexual minorities such as sex workers and homosexuals.[11] Indeed, the lines that separate law, culture and religion in Africa are often extremely blurred. Therefore, even though the Uganda Constitution specifically endorses secular statehood,[12] many patriarchal religious principles find expression in the legal codes and are often used to justify and legitimize culture and the law.[13] The legal regime constructs the idea that the institution of the family will only be protected by the law if it is based on a legal marriage.[14] The law carefully places the institution of the family on a pedestal, upholds the sanctity of a hetero-patriarchal marriage and idealizes its functions.

This section seeks to look beyond the noble declarations in the Constitution regarding the family and the various legislation relating to different aspects of the law including marriage, divorce, matrimonial property and inheritance, child custody and domicile. It conceptually explores the "private" domain within which the institution of the family is placed and closely examines its intimate structure, its "dirty linen" and other ugly untruths about it. Exploring family law beyond its Black letter is imperative for anybody genuinely interested in decolonizing this area of learning. Teaching family law in its historical, colonial-capitalist, political and socioeconomic contexts provides us with a 20/20 holistic vision of its nature, purpose and underlying interests. It exposes the inconsistencies, contradictions, instabilities and fluidities within the "regimes of the normal."[15] The standard model of what is considered "normal" in society is given power and legitimacy through legal rules. Any breach of the codes and practices of

10. See, sections 154 and 141-142 of the Penal Code Act, respectively.

11. See sections 139 and 145 of the Penal Code Act, respectively.

12. See Article 7 of the 1995 Constitution.

13. See Celestine Nyamu, "How Should Human Rights and Development Respond to Cultural Legitimization of Gender Hierarchy in Developing Countries?" *Harvard International Law Journal* 41(2) (2000): 381-418; and Sylvia Tamale, "Exploring the Contours of African Sexualities: Religion, Law and Power," *African Human Rights Law Journal* 14 (2014): 150-177.

14. See Article 31 of the Constitution, Article 16 of the UDHR, Article 23(2) of the ICCPR and Article 10(1) of the ICESCR. This is also true of traditional marriages where clans and village units are based on the institution of marriage. See Adam Kimala, *Buganda gye Twasubwa* (Durban: New Era Publishers, 1998).

15. Michael Warner, "Fear of a Queer Planet," *Social Text* 29 (1999): 3-17 at p. 16.

"normalcy" has negative or punitive consequences. Those who engage in family relationships or practices outside what is considered "normal" will be labeled "deviant" and immediately excluded or "othered" within their communities. There is a whole body of scholarship in feminist and queer theory that contests such normativities and orthodoxies of family relations.[16]

The coloniality of power approach helps in unpacking the dominant institution of the family. The "modern" family exists within a specific power system that Aníbal Quijano refers to as the "colonial matrix of power" which, as an organizing principle, entails different technologies of domination.[17] This power matrix involves, "exploitation and domination exercised in multiple dimensions of social life, from economic, sexual, or gender relations, to political organizations, structures of knowledge, state institution, and households."[18] Ugandan family relations were reshaped and transformed by British colonialism. At the centre of these changes was the emergence of a new domesticity, geared to align Indigenous households to the capitalist exploitative system.

The following processes happened within this new meaning of domesticity: women were charged with the unpaid tasks of material and psychological subsistence of the household while men were incorporated into wage labour; traditional polygnous marriages were reconstructed as primitive and backward while promoting church marriages as moral and civilized; Christianity upheld the father-led family as the basis of social (read capitalist) order; and the state was to oversee and maintain the new order of domesticity. Indeed, the normalizing system of family relations is all vested in state power—with the law as its most formidable tool of operationalization. As is the case elsewhere in the world, the status of marriage is a politico-juridical issue in Uganda: which unions are recognized; the standing of individuals within it; issues of inheritance and divorce; and questions of marriageability and

16. See Sylvia Tamale (ed.), *African Sexualities: A Reader* (Oxford: Pambazuka Press, 2011) and Chapter Four of this book.

17. Aníbal Quijano, "Coloniality of Power, Eurocentrism, and Latin America," *Nepantla: Views from South* 1(3) (2000): 533-580.

18. Ramón Grosfoguel, "The Epistemic Decolonial Turn: Beyond Political-Economy Paradigms," in Walter Mignolo and Arturo Escobar (eds.), *Globalization and the Decolonial Option*, pp. 65-77 (London: Routledge, 2010) at p. 72.

identity. Heteropatriarchal family arrangements are the only ones recognized in Uganda where a man and woman are joined in marriage with the former as the "head of the family."[19] But, as we shall see later, the ideologies of domesticity are fraught with tensions and contradictions.

Returning to Quijano's colonial matrix of power will facilitate our decolonial thinking about the family institution. In particular, we interrogate the motivation behind the current laws governing the family in Uganda and how they relate to the control of the economy as well as gender and sexuality. Let's begin with the link between the family and the economy.

Control of the Economy

When the British took over Uganda, they were faced with the challenge of raising revenue for administering the nascent colonial state and mobilizing labour for agricultural production to supply the industries back in the metropole. They subsequently sought to kill two birds with one stone by introducing and imposing taxes of three rupees on men.[20] That way men had no choice but to work on British plantations in order to pay the hut tax. Men who were too destitute to pay the tax in cash were required to pay it by sale of their labour. Jonathan Earle reports that "By 1930, Uganda was Great Britain's largest producer of African cotton, exporting approximately 23,428 metric tons of cotton lint annually and generating revenues of 31,107,000/-."[21] Although women were not expected to pay taxes, Commissioner Johnston's instructions for women's family work were included in the tax labour.

There is also evidence that although men were the ones taxed, it was women who bore the burden of growing the new crops. The

19. The ideology of father-as-head-of-the-family is part of the official primary school syllabus in Uganda.

20. Within three days of his arrival as commissioner in 1899, Sir Harry Johnson introduced a three-rupee hut tax. See Michael Tuck, "'The Rupee Disease': Taxation, Authority, and Social Conditions in Early Colonial Uganda," *International Journal of African Historical Studies* 39(2) (2006): 221–245 at p. 226.

21. Jonathan Earle, *Colonial Buganda and the End of the Empire: Political Thought and Historical Imagination in Africa* (Cambridge: Cambridge University Press, 2017) at p. 45. Also see Jan Jelmert Jørgensen, *Uganda: A Modern History* (New York: St. Martin's Press, 1981) at p. 349.

result was a pattern seen across Africa of increasing workloads for women while men controlled the household budget and cash. Women then were shifted into the subsistence economy while men, being the ones who were taxed and who sought wage employment, were more integrated into the expanding cash.[22]

So, women's work was vital for monetizing the Ugandan economy and building the requisite infrastructure to facilitate the export of raw materials and trade of goods. Men's absence from the homesteads translated into more work for women. The colonialists were very eager to consolidate patriarchal rule at the family level. The unpublished manuscript of historian James Kibuka Miti informs us about the policy of one of the early commissioners, Colonel Henry Edward Colville:

> The next point with which Colville delt [sic] was the disposal of the people's belief quite a wrong-one that through the White man's arrival and settlement in Uganda the Baganda had lost all control or influence over their wives and children. It was not the intention of His Majesty's Government, explained the Cornel [sic], to lessen in any way any person's legitimate power or authority over another person, but to promote and maintain such authority…. The people then learnt that, contrary to their opinion they were still bound to show obedience to their chiefs' orders and in the case of women to their husbands' or other masters' orders. In fact they were now all the more expected to give [deference] to authority.[23]

Thus, colonial policies and structures reshaped familial gender relations in Uganda to progressively shift towards a capitalist economy. Feminists have long argued that the capitalist-patriarchal state depends on the heteropatriarchal family institution to consolidate its power.[24] While we acknowledge particularized forms

22. Jonathan Earle, *Colonial Buganda*, Ibid. at p. 235. Also see Catherine Coquery-Vidrovitch, *African Women: A Modern History* (trans. Beth G. Raps) (Boulder, CO: Westview Press, 1997).

23. James Kibuka Miti, "A Short History of Buganda, Bunyoro, Busoga, Toro and Ankole." (Trans. by G. K. Rock), Unpublished manuscript, Makerere University archives, Box Number AR/BUG/66/2, 1930, at pp. 456-57, cited in Tuck, "'The Rupee Disease,'" Note 20 at pp. 225-26.

24. E.g., see Wally Seccombe, "The Housewife and her Labour Under Capitalism," *New Left Review* 83 (1974): 3-24; Janet Finch and Dulcie Groves (eds.), *A Labour of Love* (London:

of capitalist and patriarchal domination in different contexts, the link between the family, the local market economy and the global capitalist system is not difficult to establish. In Uganda, as is the case elsewhere on the continent, women are primarily responsible for sustaining their communities and families through voluntary and unpaid labour. On a daily basis they are involved in energy- and time-intensive work: subsistence agriculture for home consumption; care work for the needs of others including husband, children, the elderly and the sick; and various forms of non-market work that involves collection of water and fuel for cooking. Women also engage in voluntary community activities such as funeral wakes, weddings, rites of passage ceremonies, etc. And, of course, in addition to this work, many also labour in the formal and/or informal market sector, effectively working double, even triple shifts, simply to ensure that family needs are met.

Hence, women's work is key to the survival and maintenance of society. Their importance is highlighted even more when we take into account their role in reproducing human life. Theoretically, Marxist feminists refer to all this as "social reproduction" which describes "the labour process that creates value through the production and reproduction of labour [human] power."[25] Hence, we see how women's unpaid community and family labour, as well as their role in biological reproduction assume critical importance in capitalist economies. It illuminates the link between the seemingly apolitical "private" realm of the family and the "public" political realm of the neocolonial nation-state. Indeed, the institution of the family is the fundamental institution upon which the "public" sphere is built. As a hetero-patriarchal unit, the family represents a very important vehicle for advancing state economic and ideological goals. The regenerative activities performed by women effectively subsidize capital by enabling it to cut the costs of maintaining wage earners.

Routledge, 1983); and Nancy Folbre, "The Care Economy in Africa: Subsistence Production and Unpaid Care," *Journal of African Economies* 23(1) (2013): 128–156.

25. Elise Thorburn, "Human-Mechanic Assemblages: Technologies, Bodies, and the Recuperation of Social Reproduction in the Crisis Era," unpublished PhD thesis, University of Western Ontario, 2015 at p. 9.

Control of Gender and Sexuality

Coloniality of power also unfolded through the control of women's sexuality within the family institution. Beginning with the 1890s, there was a severe population decline in the Ugandan protectorate as a result of drought, famine, and disease.[26] For the colonialists, a dwindling population translated into reduced labour power. A careful analysis of British policies towards health, venereal disease, sexuality and gender in Uganda reveals that it had everything to do with their struggles to control the dynamic colonial society.[27] In other words, because of the exploits of colonial expansion, new diseases were introduced to Uganda with significant consequences for family relations. The history of the construction of the Kenya-Uganda railway between 1896 and 1901 from the coastal port of Mombasa to Kisumu (later extended to the western Ugandan copper-mining town of Kasese), in particular, is also the story of the introduction and penetration of syphilis into Uganda.[28] It is believed that the trading Arabs had first introduced syphilis to the coastal towns in the middle of the nineteenth century.[29] By 1906, syphilis had reached epidemic proportions in Uganda.[30]

Given the intimate link between venereal diseases and reproduction, women's sexuality and reproductive health immediately became a focal point for colonial administrators and missionaries. But it was not just a medical or health problem. Colonialists instrumentalized syphilis and other venereal diseases to evangelize Christian morality and motherhood. Dr. A. R. Cook of the Church Missionary Society's Mengo Hospital argued, rather

26. See Shane Doyle, "Population Decline and Delayed Recovery in Bunyoro, 1860-1960," *Journal of African History* 41 (2000): 429-458.

27. See Michael Tuck, "Venereal Disease, Sexuality and Society in Uganda," in Roger Davidson and Lesley A. Hall (eds.), *Sex, Sin and Suffering: Venereal Disease and European Society Since 1870*, pp. 191-204 (London: Routledge, 2001); Carol Summers, "Intimate Colonialism: The Imperial Production of Reproduction in Uganda, 1907-1925," *Signs* 16(4) (1991): 787-807; and Megan Vaughan, *Curing their Ills: Colonial Power and African Illness* (Stanford, CA: Stanford University Press, 1991).

28. See G. L. M. McElligott, "Venereal Diseases in the Tropics," *British Journal of Venereal Diseases* 27 (1951): 122-128.

29. Ibid. at p. 122.

30. See F. J. Lambkin, "An Outbreak of Syphilis in a Virgin Soil: Notes on Syphilis in the Uganda Protectorate," in D'Arcy Power and J. Keogh Murphy (eds.), *A System of Syphilis*, pp. 339-54 (London: Oxford University Press, 1914).

judgmentally, that there was no hope for the inherently immoral indigenes, "for until Christianity was introduced, purity of home life was unknown."[31] Historian Carol Summers reports:

> The postwar approach was to have three parts: a coercive anti-STD campaign similar to the one before the war; a propaganda campaign to educate the Baganda in the dangers of immorality; and a motherhood campaign to train midwives and, through them, mothers, in an effort to lower the infant mortality rate. This was no mere public health initiative. It was a complex response to the depopulation of Uganda. It mobilized new forces in both Uganda and Britain in an attempt to inspire and institutionalize a new morality. The administration allowed the missionaries to take the lead in the new campaign and, in paying for the missionary-administered social purity campaign and maternal health programs, it provided missionaries with a highly visible platform from which to speak.[32]

New laws were enacted to control (mostly women's) sexuality. The Dangerous Diseases Ordinance of 1909, the Townships (Venereal Diseases) Rules of 1913 and the Penal Code of 1930 which introduced prostitution as an offence are clear examples of such laws. All were modelled on the Contagious Diseases Acts of England.[33] Through the instruments of the law, the sexually transmitted diseases (STD) treatment and motherhood programmes, the sexual purity campaign and girls' education, colonialists set out to reshape Ugandan families. The Catholic maternity training school at Nsambya founded in 1918 served as a major hub for this mission. Missionaries like Dr. A. R. Cook and Katherine Timpson Cook viewed "…each midwife as a potential light shining in the wilderness, delivering medical, moral, and religious enlightenment to her flock. The Catholic missions were so impressed by the evangelical potential of the idea that by 1924 they withdrew their support from the CS maternity program and began one of their own at Nsambya, headed by Mother Kevin."[34]

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31. A. R. Cook, "An Urgent Need in Uganda," *Mercy and Truth* 12 (1908): 44-50, cited in Carol Summers, "Intimate Colonialism," Note 27 at p. 794.
32. Carol Summers, "Intimate Colonialism," Note 27 at p. 796.
33. Ibid. at p. 793.
34. Ibid. at p. 803.

Meanwhile, "the colonial office responded to pressure from the protectorate's administration and the Uganda lobby in Britain and requested 2,000 pounds sterling each year to fight in Buganda the disease that had been introduced 'as one of the blessings of European Civilization.'"[35] Not surprisingly, given the moral framework within which the treatment of STDs were placed, many African women were unwilling to seek treatment. They resented the racist attitudes of the colonialist health practitioners and administrators. They also resented being exploitatively treated as the moral and reproductive centres of families.[36] By rejecting treatment, women were asserting their agency and self-expression. But because women's social reproduction was vital to society, they remained a vital cog in the colonial policy wheel. Ideologies of morality and civilization continue to pervade the control and regulation of Ugandan women's sexuality to this day.[37]

Why is such control/regulation important? The need to control and regulate women's sexuality and reproductive capacity is crucial in heteropatriarchal-capitalist societies at two levels. First, as one of the central tenets of the institutionalization of women's exploitation, such control consolidates male domination through the control of resources and men's relative greater economic power over women. The patriarchal family engenders these economic relations whereby the man, as head of the family, exercises control over the lives of women and children who are virtually treated as his property.[38] In this way, heteronormativity forms one of the essential power bases for men in the domestic arena.[39] Capitalism required a new form of patriarchy than that which existed in pre-colonial Africa—one that embraced a particular (monogamous, nuclearized, heterosexual) family form.[40] Under such a structure, it is essential

35. Ibid. at p. 792.

36. Ibid.

37. See Sylvia Tamale, "'Keep your Eyes off my Thighs: A Feminist Analysis of Uganda's 'Mini-Skirt' Law," *Feminist Africa* 21 (2016): 83-90; and Sylvia Tamale, "Controlling Women's Fertility in Uganda: Perspectives on Religion, Law and Medicine," *Sur* 24(13) (2016): 117-128.

38. Frederick Engels, *The Origin of the Family, Private Property and the State*, (new ed.) (New York; Pathfinder Press, 1972).

39. The concept of 'heteronormativity' refers to the ideology that views heterosexuality as the normal and only legitimate socio-sexual arrangement of society.

40. Eli Zaretsky, *Capitalism, the Family and Personal Life* (New York; Harper and Row, 1976).

that the man's acquired property and wealth is passed on to his male offspring in order to sustain the system. Hence, it becomes important to control women's sexuality in order to guarantee the paternity and legitimacy of children when bequeathing property. To this end, the monogamy of women is required, without necessarily disturbing men's polygynous sexuality. Such double standards are clearly reflected in family law: for example, applying the crime of adultery to women and not to men.[41] That same inconsistency is also seen in the offence of prostitution that penalizes only the sellers (the majority being women) and not the buyers (read men) of sex.[42]

At another level, we have seen that capitalist-patriarchal societies are characterized by a separation of the "public" sphere from the "private" realm. The two spheres are highly gendered with the former representing men and the locus of socially valued activities such as politics and waged labour, while the latter is representative of the mainly unremunerated and undervalued domestic activities performed by women. This necessitated the domestication of women's bodies and their relegation to the "private" sphere, where they provide the necessities of productive and reproductive social life *gratuitously* (thus subsidizing capital)[43] and are largely economically dependent on their male partners.[44]

Heteronormativity is further maintained by the direct criminalization of same-sex relations, including family relationships. Hence, the 1995 Constitution specifically prohibits marriage between persons of the same sex.[45] The Anti-Homosexuality Act (AHA) of 2014 reiterated this position and further criminalized acts of homosexuality and its "promotion." In fact same-sex sexual relations have been outlawed in Uganda since the late nineteenth century when legalized homophobia was

41. See Section 154 of the Penal Code Act (Cap 120).

42. Sylvia Tamale, "Paradoxes of Sex Work and Sexuality in Modern-Day Uganda," in Sylvia Tamale (ed.), *African Sexualities*, Note 16.

43. Also by keeping women in a subordinate position, capitalism can justify and profit from paying lower wages to women who work outside the home, and employing them under worse conditions than men.

44. Linda Nicholson, *Gender and History: The Limits of Social Theory in the Age of the Family* (New York; Columbia University Press, 1986).

45. See Article 31(2)(A) of the 1995 Constitution.

introduced through the importation of colonial penal laws.[46] Intimate same-sex relations are particularly threatening to the heteropatriarchal family institution because they disrupt the social arrangement of a dominating male and a subordinate female. Therefore, the Anti-Homosexuality law, which was first tabled in Parliament in 2009 as a private member's bill and signed into law in February 2014, was essentially recriminalizing the offence of homosexuality by expanding its scope. Its stated objectives were to:

> Establish a comprehensive consolidated legislation to protect the *traditional family* by prohibiting (i) any form of sexual relations between persons of the same sex; and (ii) the promotion or recognition of such sexual relations in public institutions and other places through or with the support of any government entity in Uganda or any non-governmental organisation inside or outside the country.[47] [emphasis supplied]

Reference to "traditional family" invoked not Indigenous family values but colonial nuclear family values because same-sex relations existed in pre-colonial "traditional" arrangements. In August 2014, the Constitutional Court overturned the AHA on the ground that Parliament passed it without the requisite quorum.[48] The mantra of "traditional family values" was invoked to justify the denial of citizenship guarantees to certain individuals, particularly sexual minorities. Homosexuality is one of the hot-button policy issues in Uganda today which is hardly discussed in the family law lecture room.

The rhetoric of "traditional family values" serves another purpose: it facilitates the reinvention or retrenchment, by cultural relativists and political brokers, of nationalistic sentiments in a restless population during a period of serious politico-economic

46. The Indian Penal Code of 1860 was applied by the British colonialists to Uganda through the 1897 Order-in-Council even before the enactment of Section 145 of the Penal Code Act which criminalizes sex "against the order of nature" and punishable with life imprisonment.

47. See Principle 1.1 of the Memorandum to the Anti-Sexuality Bill, 2009.

48. See judgment in the case of *Oloka-Onyango and Others v. Attorney General*, [2014] UGCC 14, available at: https://ulii.org/ug/judgment/supreme-court-uganda/2014/14 [accessed December 2, 2019]. The speed at which the case was decided led pundits to speculate that government had responded to international pressure and sanctions in repudiating this law.

crises.[49] Once again, we see the political deployment of the heteropatriarchal family for the purposes of repressing the rights of a section of Ugandan citizens. Those that call for justice for sexual minorities are immediately implicated as destroyers of families and by inference, the nation. The next section examines the legal status of the family.

The Ugandan Family and the Law

This section acquaints us with the legal regime that governs family relations in Uganda. Beyond a descriptive account, the section ventures into a feminist analysis of the law as an institution of power and control. The discussion also interrogates the relationship between legality and morality and how it relates to family relations.

The International and Regional Legal Regimes

Generally, international law erects a wall between the public and private spheres. Liberal theorists like John Locke associated the public sphere with rationality, order and political authority and the private one with subjectivity and desire.[50] In general, international law operates in the public male-dominated world. While it formally removes "private" concerns (e.g., the family, sexuality) from its sphere, the international legal system nevertheless strongly influences them.[51] In international law, "private" concerns are left to states to handle. Most times, following the public/private division within the state, such issues are left to the regulation of culture and the so-called head of the family to handle. Generally speaking, issues of sexuality, reproduction and bodily integrity are either absent from the regulation of international law or are subjects of

49. See Sylvia Tamale, "Confronting the Politics of Nonconforming Sexualities in Africa," *African Studies Review* 56(2) (2013): 31–45.

50. John Locke, *Two Treatises of Government* (edited by Peter Laslett) (New York: Cambridge University Press, 1960). Also see Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester: Manchester University Press, 2000) at p. 30.

51. See Hilary Charlesworth, "The Public/Private Distinction and the Right to Development in International Law," *Australian Year Book of International Law* 12 (1988-1989): 190-204.

very controversial and highly politicized debates. These silences reflect the gendered nature of the international legal system.[52]

International and regional human rights treaties—including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the African Charter on Human and Peoples' Rights (Banjul Charter)—all emphasize the sanctity of the family institution.[53] And marital supremacy is deeply intertwined within the legal family. Even the Protocol to the Banjul Charter on the Rights of Women in Africa (Maputo Protocol) endorsed these principles, including some provisions that actually led to women's *de facto* disenfranchisement. For example, Article 6(d), which requires every marriage to be registered "in order to be legally recognized" on a continent where the vast majority of marriages are unregistered, may do more harm than good to women.[54] But there are also several restrictions and conditions imposed by the international legal regime. For instance, a person must have attained majority age in order to enjoy the right to marry and found a family. Once they have attained full age,[55] marriage must be entered into freely, and with full consent.[56]

One of the touchstones of the family institution involves nurturing children or the "next generation." This means that the relationship between an adult and a child is one of trusteeship rather than ownership.[57] This conception is quite different from the traditional way that most parents treat their children with paternalism and subordination. The 1989 United Nations Convention on the Rights of the Child (CRC), which defines a child as one "below the age of eighteen," endorses the trusteeship concept

52. Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law*, Note 50.

53. See Articles 16(3) of the UDHR, 10(1) of the ICCPR, 23(1) of the ICESCR, 18(1) & (2) of the Banjul Charter.

54. See Fareda Banda, "Blazing a Trail: The African Protocol on Women's Rights Comes into Force," *Journal of African Law* 50(1) (2006): 72–84 at p. 76.

55. Article 16(1) of the UDHR.

56. Article 23 (3) and (4) of the ICCPR.

57. See Jaap Doek, "What Does the Children's Convention Require?" *Emory International Law Review* 20(1) (2006): 199-208; and Barbara Woodhouse, "Out of Children's Needs, Children's Rights: The Child's Voice in Defining the Family," *BYU Journal of Public Law* 8 (1998): 321-341.

and proposes norms of justice to guide parents in acting on children's behalf. The CRC recognizes the autonomy of children and elaborates their needs-based rights. Hence, Article 5 of the Convention provides:

> States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner *consistent with the evolving capacities* of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention. [emphasis supplied]

The concept of "evolving capacities" is crucial in recognizing that a child from ages zero to eighteen is a very changeable person and therefore frames the child's relationship with the parent within shifting capacities. The rights discourse for infants, toddlers, adolescents and young people differs quite remarkably and they should not be lumped together in a generic definition of "child." Thus parents must recognize children as rights-holders and particularly their freedom of thought, conscience and their rights to dignity, privacy and sexual education commensurate with their evolving capacities.[58] Under the CRC, the parents' obligation is to guide "the child" with the latter's best interest being their central concern.[59]

The 1999 African Charter on the Rights and Welfare of the Child (ACRWC) also endorses the spirit and content of the CRC when it states, "Nothing in this Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international Convention or agreement in force in that State."[60] Like the CRC, the Charter also recognizes that, "Parents, and where applicable, legal guardians shall have a duty to provide guidance

58. Gerison Lansdown, *The Evolving Capacities of the Child* (Florence, Italy: UNICEF, 2005), available at: http://www.unicef-irc.org/publications/pdf/evolving-eng.pdf [accessed on Nov 12, 2019].

59. See Article 18 of the CRC.

60. See Article 1(2) of the ACRWC.

and direction in the exercise of these rights having regard to the evolving capacities, and best interests of the child."[61]

In conclusion, a feminized international legal system would not simply extend international legal regulation to all "private" household activities, but would also attempt to transcend the gendered public/private dichotomies, incorporating and responding to the concerns of women and children. For instance, it was not until the early 1990s with the ad hoc UN tribunals on Yugoslavia and Rwanda that the crime of rape was prosecuted under international law.[62] But the only UN documents that specifically prohibit marital rape are the non-binding Declaration on the Elimination of All Forms of Violence Against Women (DEVAW)[63] and the Beijing Platform for Action.[64] Similarly, it took more than a decade after the adoption of the CRC in 1989 for the UN to adopt two important protocols to the CRC in the year 2000. The first one was the optional protocol on sex trafficking and the second one pertained to child soldiers.[65]

The Domestic Legal Regime

There are several laws that are directly or indirectly related to family relations in Uganda. The major ones among them are the Marriage Acts;[66] the Divorce Act; the Children Act; the Succession Act; the Domestic Violence Act and the Penal Code. The Constitution sets the stage in Article 31 where it provides for the rights of all Ugandans aged 18 and above to marry, found a family and care

61. See Article 9(2) of the ACRWC.

62. See *The Prosecutor v. Jean-Paul Akayesu* Case No. ICTR-96-4-T (1998). Rape was subsequently codified in the Rome Statute of the International Criminal Court, 1998.

63. See Article 2 of DEVAW.

64. See Article 113(a).

65. See the Optional Protocol to the Convention on the Sale of Children, Child Prostitution, and Child Pornography (General Assembly Resolution A/RES/54/263 of 25 May, 2000) and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (GA Res. A/RES/54/263 of 25 May, 2000), respectively.

66. These include: The Marriage Act (Cap 251); The Marriage of Africans Act (Cap 253); Marriage and Divorce of Mohammedans Act (Cap 252); Hindu Marriage and Divorce Act (Cap 250); and Customary Marriage (Registration) Act (Cap 248).

for their children.[67] It further promotes and endorses heterosexual families as Article 31 (2)(a) clearly prohibits "marriage between persons of the same sex." The Constitution gives men and women free will to enter into marriage and enjoy equal rights "at and in marriage, during marriage and its dissolution."[68] However, when we unpack the concept of "free will" within the institution of marriage emphasized by the Constitution, we find that it is heavily circumscribed by external factors such as culture, gender, class, religion, race, ethnicity, mental and physical ability, age, sexual orientation and sero-status.

As is the case in the rest of Africa, culture has a particularly significant influence on the institution of marriage in Uganda. The rituals and customs that govern marriage in African cultures do not necessarily assume "free will" on the part of the bride and the groom-to-be. Rules of exogamy and endogamy, for example, operate to restrict the freedom of choice of marriage partners. In several communities in Uganda, the cultural boundaries of exogamy prohibit individuals of the same clan from uniting in marriage. The rules of endogamy require individuals to marry within their racial, ethnic, caste, religious and social class ostensibly in order to avoid "contamination" by outsiders.[69] Violating these rules usually leads to ostracization by the family and the community. The sentiments towards these endogamous or totemic rules are so strong that in 2006 a father dragged his adult daughter who was planning to marry her clansmate to court to stop the impending marriage. Bruno Kiwuwa described the intended marriage between his daughter and her fiancé, who belonged to the same *ndiga* (sheep) clan as "abominable, immoral, unethical, uncustomary and illegal" because it violated the Kiganda exogamous custom.[70] The High Court agreed with Kiwuwa and issued a permanent injunction restraining the defendants from

67. Article 31(1), (4) and (5).

68. Article 31(1)(b) and 31(3).

69. See Dave M. Todd, "Caste in Africa?" *Africa: Journal of the International African Institute* 47(4) (1977): 398-412.

70. See *Bruno Kiwuwa v. Ivan Serunkuma and Juliet Namazzi*, High Court Suit No. 52 of 2006. Also see Ronald Kakungulu-Mayambala, "Bruno Kiwuwa v. Ivan Serunkuma & Juliet Namazzi: An Appraisal of the Right to Marry and Found a Family in Uganda," *East African Journal of Peace and Human Rights* (13)2 (2007): 334-346.

ever contracting a marriage or founding a family. By "saving" the traditional marriage institution the law saved the ossified family structure. In contrast, the Banyankole-Bahima of western Uganda permit marriage between cross-cousins.[71]

Although marriages that violate endogamous rules—particularly marriages across racial/ethnic and religious lines—are becoming increasingly common, inter-marriages are still frowned upon by many on account of deep-rooted prejudices. Hence, while there are no formal rules that require individuals to marry within their own social groups, *de facto* endogamy exists in that the majority of Ugandans marry people like themselves—Acholi to Acholi, Muhima to Muhima, Catholic to Catholic, able-bodied to able-bodied, and middle-class to middle-class. But like other stratified societies, there is a trend towards hypergyny.[72] The deep-rooted cultural practices pertaining to gender and other aspects of identity also continue to curtail "free will" in family relations and practices.

Regarding children's rights in Uganda, the Children Act stands on all fours with the CRC and the ACRWC as it effectively domesticates them.[73] It provides clear guiding principles that govern decisions concerning children, which conform to the principle of evolving capacities: Parents must take into account (a) the ascertainable wishes and feelings of the child concerned in the light of his or her age and understanding; (b) the child's physical, emotional and educational needs; (c) the likely effects of any changes in the child's circumstances; (d) the child's age, sex, background and any other circumstances relevant in the matter; (e) any harm that the child has suffered or is at the risk of suffering; (f) where relevant, the capacity of the child's parents, guardians or others involved in the care of the child in meeting his or her needs.[74] The Constitution, which sets the minimum employment

71. Cross-cousins are the children of your mother's brother (maternal uncle's children) or those of your father's sisters (paternal aunt's children). This is distinct from parallel-cousins who are the children of your father's brother (paternal uncle's children) or those of your mother's sister (maternal aunt's children). See Kalervo Oberg, 1949, "Analysis of the Bahima Marriage Ceremony," *Africa: Journal of the International African Institute* 19(2) (1949): 107-120.

72. Hypergyny refers to the act of marrying up (especially for women) or seeking a mate of a slightly higher social status in order to improve your own.

73. See Principle 4(c) of the First Schedule to the Children Act.

74. See Section 3 and the First Schedule of the Children Act (Cap 59).

age at sixteen (i.e., lower than the age of majority) enforces the principle of evolving capacities.[75] It also imposes a colonial understanding of "underage" relating to ability to work. Moreover, the economic and social complexities and realities of millions of impoverished juveniles in Uganda forces them to join the waged labour market, just to survive.

Family Relations: Then and Now

The structure and nature of the institution of the family has not always been as we know it today. As the key site for production and reproduction of gendered individuals, the family has historically been at the centre of social change. The basic arrangement works in such a way that "the paid labour market is structured on the assumption that workers, (mostly men) are supported by family (i.e., women), who meet their daily emotional and material needs, as well as care for the vulnerable young and old."[76] As the discussion below illustrates, the institution of the family has been the subject of and subjected to ideology, socioeconomic norms and conventions.

Traditional Family Relations

The nature and meaning of family formations and relations in the East African Nyasa region prior to the construction of the artificial borders drawn by the colonialists at the Berlin Conference of 1884-5 were quite varied and different from what they look like today. The typical traditional African family was characterized by so-called extended households.[77] The adjective "extended" used to describe Indigenous families connotes a colonial reading of African family arrangements; it presupposes an expansion from some (superior) standard—the Western nuclear household being the norm/default, while the extended one is the exception. Composed of extensive

75. See Article 34(5) of the 1995 Constitution.

76. Sylvia Law, "Equality: The Power and Limits of the Law," *Yale Law Journal* 95(8) (1986): 1769-1786 at p. 1777.

77. Rebecca Calder and Tom Tanhchareun, *Informal Social Protection: Social Relations and Cash Transfers*, Research Report (Commonwealth of Australia, 2014).

family networks, Indigenous families comprised a much wider scope than the (contracted?) nuclear family unit common in Western tradition. But what about the marriage arrangements?

You could not speak of a single "traditional marriage." Historians who have traced the history of marriages and family in Uganda from the 8th century demonstrate how the institution has metamorphosed through time. For example, David Schoenbrun writes about Bantu speakers who descended from the Nyanza region and settled in the Great Lakes region, including the Baganda, Basoga, Bagwere and Bagisu.[78] He explains that during the centuries of migration, the tracing of lineal descendants shifted from both the maternal and paternal lines to a strong emphasis on membership in patrilineage.[79] Schoenbrun's work was further developed by his student Rhiannon Stephens, who carefully and impressively used historical linguistics to trace the changing marriage arrangements in Uganda over a period of twelve centuries.[80] She argues that "what we call marriage was a conglomeration of different kinds of often messy relationships between women and men" and concludes:

> The diversity in marriage in this region since North Nyanzan times was a central element in giving women and men the flexibility to make and remake marriages, at both individual and social levels. At the same time, social status was an important factor in enabling and constraining those choices… Thus marriage in Uganda at the dawn of the twentieth century was not a single institution undermined by violence and social dislocation, but rather an assemblage of practices and ideas that served a wide range of social, economic, and political needs.[81]

The language of marriage changed over millennia, constructing

78. David Schoenbrun, *The Historical Reconstruction of Great Lakes Bantu Cultural Vocabulary: Etymologies and Distributions* (Cologne: Rüdiger Köppe, 1997).

79. See Rhiannon Stephens, "'Whether They Promised Each Other Some Thing Is Difficult to Work Out': The Complicated History of Marriage in Uganda," *African Studies Review* 59(1) (2016): 127-153. As a matter of fact, many African societies (including some in Kenya and Tanzania) shifted to tracing descent matrilineally—an entire belt that runs from western through central and southern Africa. But even here matrilineality exists within an entrenched patriarchal context.

80. Rhiannon Stephens, "'Whether They Promised," Ibid.

81. Ibid. at pp. 138, 147.

new forms of gendered agency for men and women in certain groupings. Thus men *married* women (*kushwera* (Runyankore/Rukiga), while women were *married to* men (*kushwerwa*). Among the Baganda, the etymology of the term "marry" (*kuwasa*) for a man refers to the verb "impregnate" (*waka*) while that of a woman getting married (*kufumbirwa*) derived from the verb "cook" (*okufumba*). Highlighting men's sexual role in the marriage and women's role in food production and preparation emphasized agency on the parts of both sexes. However, among the Luo, the term used for marriage (*nywom* or *nyom*) is gender-neutral.

Most marriages were exogamous, which meant that individuals were only allowed to marry outside their clans. Such an arrangement had a significant impact on gender relations in a patriarchal setting. Because women were married outside the clan, men found it important to safeguard the wealth of the family/clan by ensuring that their wives did not inherit valuable assets which would then be transferred to another family/clan.[82] When this is placed against the backdrop of patriarchy, it meant that children belonged to the patrilineage and to patriclans.[83] But endogamous clan marriages were not uncommon, particularly among the royal families of Bunyoro, Ankole and Buganda where it was institutionalized.[84] The objective of royal incest ostensibly was to produce an inbred heir to the throne, although the practice of royal polygyny also played an important political role of forging affinal relations with vast numbers of the king's subjects.[85] Among the Baganda, for example, the Kabaka (king) had to marry his half-sister who became the queen, but the future Kabaka was seldom the

82. David Schoenbrun, *The Historical Reconstruction*, Note 78.

83. See Rhiannon Stephens, "Lineage and Society in Precolonial Uganda," *Journal of African History* 50: 203-221. This notion remained firmly enforced in the pre-1995 constitutions. E.g., see the custody case of *Nakagwa v. Kiggundu* [1978] HCB 139 where Justice Benjamin Odoki stated that in such suits it was relevant to consider "the father's *natural and superior right* to the custody of the child as against the mother." (emphasis added).

84. See John Roscoe, *The Baganda: Their Customs and Beliefs* (London: Macmillan, 1911); John Roscoe, *The Bakitara* (Cambridge: Cambridge University Press, 1923); and John Roscoe, *The Banyankole* (Cambridge: Cambridge University Press, 1923).

85. Pierre van den Berghe and Gene Mesher, "Royal Incest and Inclusive Fitness," *American Ethnologist*, 7(2) (1980): 300-317.

son of the queen.[86] The future Kabaka would be the son of one of the peasant wives of the Kabaka.[87]

Moreover, there existed several traditional types of marriage including elopement, polyandrous marriages, infant betrothal, levirate or so-called "wife inheritance" and "slave wives."[88] Further east, in what came to be baptized Kenya, several communities practised woman-to-woman marriages, for example, the Simbete, the Kikuyu, the Nandi and the Kiisi of present-day Kenya.[89] The Kuria of present-day Tanzania and the Nuer of present-day Sudan all engaged in this type of marriage for reproductive, economic and diplomatic reasons.[90] This shows how flexible and mutable domestic and sexual relationships were.

Nakanyike Musisi confirms that different forms of traditional marriages were contracted in Buganda.[91] These included wives being acquired as gifts (*obufumbo obuwumirize*) or as a pawn to settle a debt or fine (*obufumbo obwenvuma*), through "inheritance" from a deceased brother or by kidnapping (*okuwuya*) or abduction (*endola*). Not all involved the formal exchange of bridewealth (e.g., *obuwumirize, okuwuya and endola*). John Roscoe also recorded marriage "by capture" among the Bagisu and Bakiga. He further described the practice of polyandry among the Banyankole:

> It often happened that a man had only a few cows, not sufficient both to purchase a wife and to supply them with food; he would therefore seek one or more men, who might be uterine brothers or only clan-brothers, and ask them to join him in purchasing and providing for a wife. They pooled their cows and the proposer obtained the wife. She then became common to the purchasers, though the children belonged to the man who really married her, going through the usual promises to the bride's

86. John Roscoe, *The Baganda*, Note 84.

87. Ibid.

88. Rhiannon Stephens, "'Whether They Promised Each Other," Note 79.

89. See Hugo Huber, "'Woman-Marriage' in Some East African Societies," *Anthropos* 63/64 (1969): 745-752; Wairimū Njambi and William O'Brien, "Revisiting 'Woman-Woman Marriage': Notes on Gĩkũyũ Women," *NWSA Journal* 12(1) (2000): 1-23; and Regina Oboler, "Is the Female Husband a Man? Woman/Woman Marriage Among the Nandi of Kenya," *Ethnology* 19(1) (1980): 69-88.

90. See more detailed discussion in chapter four of this book.

91. Nakanyike Musisi, "Women, 'Elite Polygyny,' and Buganda State Formation," *Signs* 16(4) (1991): 757-786.

relatives. In after years, as he obtained more cows, he could buy out the other brothers and retain the woman for himself. Women readily accepted such conditions, and I heard of no serious difficulties arising from such a custom.[92]

The concept of adultery was alien to some communities in Uganda. Take the example of the Banyankole who saw no immorality or shame in sharing their wives with friends:

> [A]fter marriage the husband might bring either a brother or a friend to spend the night with him, and always welcomed him to his couch, leaving his wife to the guest when he arose in the early morning to attend to his herd. It was the duty of the wife thus to entertain any guest of her husband, and there was no thought of impurity in such a custom. Should the husband's father visit them it was the husband's duty to vacate his house, leaving wife and bed to his father.[93]

Furthermore, during cultural festivities, such as *embalu* (male circumcision) among the Bagisu and Sabiny or *okwabya olumbe* (last funeral rites) among the Baganda, amidst all the beer-drinking and festivities, it was quite common for men and women to disregard all marital ties and engage in promiscuous sex.[94]

The fact that all societies in Uganda are patrilineal means that the rule of male primogeniture is central to "customary" law of succession.[95] Under this rule, the closest male heir (usually the eldest son, unless he was disqualified through some constraint) is the "customary heir" who is both the administrator and successor to the estate of his deceased father. It did not matter whether the son was born out of wedlock as the concept of illegitimacy was not known among communal clans. If there are no male descendants

92. John Roscoe, "Uganda and Some of its Problems: Part I," *Journal of the Royal African Society* 22(86) (1923): 96-108, at p. 107

93. Ibid.

94. Ibid.

95. Frederick Jjuuko traces matriarchy and matrilineality among the Baganda back to the stage of barbarism when pastoralism prevailed. See Frederick Jjuuko, "Matriarchy in Tribal Buganda, Uganda," *Journal of African Religion and Philosophy* 2(2) (1993): 88-120, pp. 97-98. He argues that with the introduction of agricultural production, particularly with the discovery of the ox-plough, men started harnessing the animals and took over agriculture. With the appearance of surplus and private property, the man's dominance is established and patriarchy/patrilineality takes over.

(sons), the deceased's closest male descendant (e.g., his brother's son) succeeds him. For women to have inheritance rights in a patriarchal and a post-marital patrilocal[96] residential society was viewed as "giving away" clan property (particularly land) to another clan under the rules of exogamy. So, a woman would enjoy usufruct rights on land owned either by her father or her husband. It should be noted, however, that a few women within the royal family in Buganda owned land in their own right.[97] But the culture of male primogeniture is changing in many communities and today, not only can some women inherit land from their fathers but they can also be installed as heirs to their fathers.[98]

Divorce was mainly through the reimbursement of bridewealth to the husband's family.[99] But custom allowed married women some reprieve from the excesses of their patriarchal husbands through cultural practices such as *kunoba* among the Baganda, Basoga and Bagwere. Hence, these women (with the exception of the wives of Kabakas and chiefs) had the option of abandoning abusive husbands and returning to their parent's home through *kunoba.*[100] Family relations were remade and reshaped with socioeconomic changes, intermarriage, conflict, drought and epidemics. They were not cast in stone.

The survival of traditional societies very much depended on collective labour, which conferred a great deal of importance to reproduction. In that sense, women's positive role in fecundity and fertility was central to almost all Ugandan cultures. Among the Baganda, for example, this was reflected in the related principles of "twinness" and "gender." Frederick Jjuuko explains that Buganda's understanding of all social and natural phenomena invoked the application of these two principles. The doctrine of "twinness" presupposed that for anything to be complete, it had to have its

96. Patrilocality refers to residency rules that require a newly-wedded couple to live with or near the husband's family.

97. John Roscoe, "Uganda and Some of its Problems," Note 92.

98. See case of *Bamwite v. Nangobi* [1977] HCB 41.

99. In the case of *Mifumi (U) Ltd & Ors v. Attorney General & Anor* Const. Appeal No.2 of 2014 (unreported), the Supreme Court declared this practice to be unconstitutional and banned it for good.

100. See Apollo Kaggwa, *Empisa z'Abaganda* (Kampala: Crane Publishers, 1999); and John Roscoe, *The Baganda*, Note 84.

double. While the concept of "gender" presupposed that the male and female were both part of the whole (with no polarization). Hence, a male-female pairing of all things (in the temporal and spiritual worlds) was important.[101] At the domestic level, the husband was regarded as the *Kasolya* (apex) and the wife as the *Musingi* (anchor), and therefore the basis of stability in the home.[102] As Jjuuko explains, "The woman's pivotal role in Buganda society is further illustrated by the fact that most ceremonies and rituals in Buganda were led and indeed hinged on women… motherhood conferred respect, prestige and adulthood but also defined the very existence of Buganda."[103]

Among the Banyoro, clan communism, which extended to wives, meant that any member of a clan could have access to the wife of his clan-brother. This obviated the need for polygyny. For instance, during the three-year separation when a mother was nursing her baby, the father had access to the wife of his clan-brother.[104] This clan communism also took care of property ownership.

Colonial Influences

When the colonialists arrived in the geographical area of Africa now baptized Uganda, with their mission to convert the "natives" to Christianity, they found many of the traditional family practices strange insofar as they were different from their own.[105] At best they noted such "strangeness," but at worst considered them to be "uncivilized." Using Eurocentric lenses to interpret and understand the ways of the Indigenous communities meant that they often misunderstood and misrepresented traditional practices. Such reinterpretation had profound implications for domestic relations

101. Frederick Jjuuko, "Matriarchy in Tribal Buganda, Uganda," Note 95. Also see Juliet Kiguli, *Gender, 'Ebyaffe' and Power Relations in Buganda Kingdom: A Study of Cultural Revivalism*, PhD Dissertation (2001), Universitätzu Köln, The Netherlands.

102. Frederick Jjuuko and Edith Kibalama, *Culture and Women: The Position of Women in Buganda* (Kampala: Fountain Publishers, 2011).

103. Ibid. at p. 32.

104. John Roscoe, "Uganda and Some of its Problems," Note 92.

105. Some of the native marriage practices were not unfamiliar to the British. The English Deceased Wife's Sister's Marriage Act of 1907, for example, legalized levirate marriages by allowing a widower to marry his wife's sister.

in general and for the institution of marriage in particular. Take the example of the legitimate form of marriage through elopement which they described as "abducting an unwilling woman into forced marriage."[106] Stephens criticizes such a representation, suggesting that marriage through elopement in fact demonstrated women's agency in thwarting the ambitions of their patriarchal elders to force them into prearranged marriages that were supposed to foster alliances with another family/clan. Sometimes it was a way to avoid or reduce unaffordable bridewealth.[107]

Traditional marriages were also subjected to the racist and illogical repugnancy test, which required all Indigenous practices to conform to (colonial) "natural justice, equity and good conscience."[108] Such a test was only intended to subjugate native practices that were distasteful to the colonialists. This was clearly demonstrated in the case of the institution of bridewealth, which was described by a colonial British judge as "wife purchase." In the infamous case of *Amkeyo v. R*, Chief Justice Hamilton exposed his racist bias: "In my opinion the use of the word marriage to describe the relationship entered into by an African native with a woman of his tribe according to tribal custom is a misnomer which has led to a considerable confusion of ideas. I know of no word that correctly describes it; 'wife purchase' is not altogether satisfactory but it comes much nearer to the idea than that of 'marriage' as generally understood among civilized peoples."[109] The irony was that at that time, English common law in fact regarded wives as subservient chattels to their husbands.[110] Colonial law attempted

106. Père Le Veux, *Manuel de la langue luganda, comprenant la grammaire et un recueil de contes et légendes* (Maison-Carrée, Algeria: Imprimerie des Missionaires d'Afrique, 1914).

107. A bride with an elopement history fetched less bridewealth than an "untainted" "well-behaved" one. Rhiannon Stephens, " 'Whether They Promised Each Other," Note 79 at p. 141. Also see David W. Cohen, *Womunafu's Bunafu: A Study of Authority in a Nineteenth Century African Community* (Princeton: Princeton University Press, 1977).

108. See Article 20(a) of the 1902 Order-in-Council.

109. *Amkeyo v. R* (1921) EACA 12 at p. 15. For a detailed discussion of the traditional social functions of the institution, see Daniel D. Nsereko, "The Nature and Function of Marriage Gifts in Customary African Marriages," *American Journal of Comparative Law* 23(4) (1975): 682-704.

110. In the case of *Regina v. R* [1991]1 AC 599, which overturned the common law rule that a husband could not rape his wife, Lord Keith of Kinkel observed that "one of the most important changes is that marriage is in modern times regarded as a partnership of equals, and no longer one in which the wife must be the subservient chattel of the husband." (p. 770).

to abolish and later standardize bridewealth which led to the conceptualization of the practice as a purchase, in the process denigrating the institution with the concomitant deprecation of women's status.

The colonialists introduced a radically different type of marriage derived from the common law case of *Hyde v. Hyde* which defined a monogamous marriage as the voluntary "union for life of one man and one woman to the exclusion of all others."[111] While monogamous nuclear families were touted as signifiers of modernity and progress, polygyny was recreated as uncivilized, unchristian and immoral. Missionaries denounced polygyny as harmful to women. For example, Archdeacon Walker imparted the notion to his followers that polygynous unions were substandard and offered women in such marriages instant dissolution if they wished to be married in church.[112] John Roscoe observed that the introduction of monogamous restrictions caused a state of disorder in the protectorate.[113] To this day, thousands of Ugandan men with syncretic religious beliefs continue to blend Christianity and the traditional custom of polygyny, defying the rule in *Hyde v. Hyde*.[114] As converted Christians cast off their multiple wives, there was a surplus of unmarried women who turned to prostitution.[115] The domestic burdens of women who had been in polygynous households suddenly increased when they converted to monogamy as they no longer shared chores with co-wives.

Monogamous church marriages were almost impossible to get out of through divorce. And where traditional marriages had been intolerant of the excessive mistreatment of wives by their husbands, common law endorsed it by, for instance, exempting husbands from rape charges against their wives.[116] This common law position was well captured in the words of Lord Chief Justice Matthew Hale, who wrote: "But the husband cannot be guilty of a rape committed

111. Lord Penzance in *Hyde v. Hyde* (1866), LR i P & D 130 at p. 133.

112. See Nakanyike Musisi, "Morality as Identity: The Missionary Moral Agenda in Buganda, 1877-1945," *Journal of Religious History* 23(1) (1999): 51-74 at p. 60.

113. John Roscoe, "Uganda and Some of its Problems" Note 92.

114. Legally, this would amount to bigamy which is a crime but a search in the Family Court registry for any such prosecution yields almost no cases on record.

115. John Roscoe, "Uganda and Some of its Problems" Note 92, at p. 104.

116. See Section 123 of the Penal Code Act (Cap 120).

by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given herself up in this kind unto her husband which she cannot retract."[117] Wives were viewed as their husband's property or chattel and therefore the crime of rape was taken like any other crime against property.[118] A husband's control over his wife's body could also be seen in the way adultery between a wife and another man was constructed in Victorian Britain—in 1707, English Lord Chief Justice John Holt described adultery as "the highest invasion of property."[119]

The attempts by colonialists to erase all other forms of marriages were unsuccessful. However, they succeeded in creating a hierarchy of marriage forms with the church marriage considered superior and more "civilized" than Indigenous marriages. They also introduced the marriage register and the practice of a wife adopting her husband's surname. Ascertaining the marital status of converts was an issue of great importance to the colonial missionaries who were anxious to regulate the institution of the family for their own interests. But because of the diversity of social conditions and variations in marriage, they were often confused about this. Moreover, most converts remained secretly loyal to their African Traditional Religions (ATR); the tendency was for a significant number of people to practice ATR concurrently, even if discreetly, with the "new" religions in a syncretic fashion.[120]

English common law also introduced the concept of spousal oneness into Uganda's legal system: Sir William Blackstone, the eighteenth-century British jurist, aptly described the status of married women under English common law: "In law husband and wife are one person, and the husband is that person." He explained:

> By marriage the very being or legal existence of woman is suspended, or at least it is incorporated or consolidated into that of the husband,

117. Sir Matthew Hale, in his *History of the Pleas of the Crown* (1736) Vol. 1, Ch. 58, p. 629.

118. Sonya Adamo, "The Injustice of the Marital Rape Exemption: A Survey of Common Law Countries," *American University International Law Review* 4(3) (1989): 555-589.

119. See *R v. Smith (Morgan)* [2001] 1 AC 146 at p. 169.

120. Abigail McCrary, "Tracing Tradition: A Case Study of Child Sacrifice in Uganda," *International Letters of Social and Humanistic Sciences Journal* 30(1) (2014): 25-38. Also see Lamin Sanneh, "The Domestication of Islam and Christianity in African Societies," *Journal of Religion in Africa* 11(1) (1980): 1-12.

> under whose wing, protection and *cover*, she performs everything; and is therefore called in our law as a *feme covert*... under the protection and influence of her husband, her baron, or lord; and her condition during her marriage is called her *coverture*...[121] [emphasis supplied]

Hence, through the doctrine of "coverture"(or the unity principle), women were denied legal, political and economic rights.[122] This common law doctrine was imported to Uganda through the Statutes of General Application and throughout the colonial period Ugandan women could not own property in their own right. In fact it was not until the 1977 High Court case of *Uganda v. Jeninah Kyanda* that it was formally recognized that women in Uganda—regardless of marital status—could own property in their own right.[123]

So, where there had been multiplicity, diversity, fluidity and hybridity in traditional Ugandan marriage forms, colonialism neatly straitjacketed them into one distinct category of "customary marriages" which were potentially polygynous and legitimized through the exchange of bridewealth. Where the definition of "wife" had been adaptable and changeable, the colonialists sought to streamline it, resulting in contentious legal battles that continue to this day.[124] This coloniality of being put Ugandan women to great disadvantage because in most cases their only access to resources and rights (e.g., inheritance, guardianship, insurable interest, social security benefits, etc.) is through their affiliation to a husband (or a father). Hence, thousands of "wives" who have cohabited with and diligently served their "husbands" for decades have had a rude awakening when courts have told them that they did not fulfil some legal technicality to qualify for the title "wife" or "widow" in the eyes of the law and therefore were not entitled to any benefits from the relationship.[125]

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121. William Blackstone, *Commentaries on the Laws of England*, Vol. 1 (Chicago: University of Chicago Press, 1765).

122. Claudia Zaher, "When a Woman's Marital Status Determined Her Legal Status: A Research Guide on the Common Law Doctrine of Coverture," *Law Library Journal* 94(3) (2002): 459-486.

123. [1977] HCB 111.

124. See, for example, *Alai v. Uganda* [1967] EA 596.

125. See, e.g., *Re Kibiego* [1972 EA 179]; *Farzia Rwobuganda v. Donato Banemuka* [1978] HCB 244; *Christine Male & Anor v. Namanda & Anor* [1982] HCB 140; *James Mboijana v. Prophine Mboijana* [1990-91] HCB 10.

Through multiple agreements signed with traditional authorities (in particular the 1900 Agreement and the 1902 Order-in-Council), the British colonialists introduced new systems of land tenure in Uganda. "Customary" systems of landholding, which were largely communal, were replaced with the registrable mailo land in Buganda, freehold in the other kingdom territories, leaseholds on public (government) land systems, with the largest chunk of land in the country remaining under customary tenure. In Buganda, peasants who had previously had access to and control over registrable land were reduced to squatters or tenants (kibanja holders) and obliged to pay land taxes (e.g., envujjo and busuulu in Buganda).[126] And the unlimited usufruct rights of women that they had traditionally enjoyed were all but extinguished under the new arrangements.[127]

The impact that these modifications had on household and family structures in Uganda was significant. But such influences very much depended on the social organization of the various communities. For example, the fashion in which the policies affected the centralized kingdom societies of Buganda, Bunyoro, Ankole and Toro, was quite different from that of the segmentary lineages of the Luo and other similarly organized communities. One example of the way that the tenure system influenced the locality-based systems of the kingdoms was that influential land owners desecrated sacred clan/family burial-grounds by appropriating them from peasants.[128] The question of who legally occupied the land for peasants took a strong gender dimension as male tax payers and heads of families were viewed as the ones with occupancy rights. Wives, on the other hand, became dependent on the male land "owners" in order to access it. Aili Tripp reports that "Women provide 70-80 percent of all agricultural labour and 90 percent of all labour involving food production in Uganda, yet they

126. See Apollo Makubuya, *Protection, Patronage or Plunder: British Machinations and (B)Uganda's Struggle for Independence* (Newcastle upon Tyne: Cambridge Scholars Publishing, 2018).

127. See Lorenzo Cotula (ed.), *Changes in "Customary" Land Tenure Systems in Africa*, (Rome: IIED, Livelihood Support Program, 2006). Available at http://www.fao.org/3/a-ah621e.pdf [accessed Dec 30, 2019].

128. Edward E. Evans-Pritchard, "Luo Tribes and Clans," *Rhodes-Livingstone Journal* 7 (1949): 24-40.

own only a fraction of the land."[129] Hence, women were relegated to a redefined, subordinated domesticity. By contrast, the status of men was elevated.

Further changes were seen at the level of household production. Prior to the coming of traders from the Middle East and Europe, economic production in Africa was organized within domestic family units. African Indigenous cottage industries included the manufacturing of products such as bark cloth and pots, the churning of clarified butter, and the weaving of cloth, baskets and mats. As noted by Jean-Louis Flandrin, at that time, the family as an institution had many of the characteristics of a public institution, and the relations of kinship served as a model for social and political relations.[130] When the colonialists arrived, they reorganized production in bureaucratic economic enterprises outside the domestic arena.[131] In other words, where there had been a blurred distinction between "private" and "public" life, new ideologies and policies evolved new structures and forms of domination, greatly affecting gender relations in Uganda.

Some of the colonial structures and policies that emboldened the line that separated the private sphere from the public realm included education and taxation. The education system influenced policy which constructed "public men" and "domesticated women." Until 1918, the British government entrusted education in Uganda to the missionaries.[132] Several sex-segregated boarding schools were established with different curricula for males and females. Religious instruction was important as a colonial moralizing force for all schools. However, while males were trained for professional jobs, the emphasis for females was on practical housewifery skills

129. See Aili Tripp, "Women's Movements, Customary Law, and Land Rights in Africa: The Case of Uganda," *African Studies Quarterly* 7(4) (2004): 1-19, at p. 6.

130. Jean-Louis *Flandrin, Families in Former Times: Kinship, Household and Sexuality* (trans. Richard Southern) (Cambridge: Cambridge University Press, 1979). Although Flandrin was writing about the society in pre-industrial France, his words ring true for the traditional family institution in most of Africa.

131. See Frederick Jjuuko and Edith Kibalama, *Culture and Women*, Note 102; and John Roscoe, *The Baganda*, Note 84.

132. Nakanyike Musisi, "Colonial and Missionary Education: Women and Domesticity in Uganda, 1900-1945," in Karen Hansen (ed.), *African Encounters with Domesticity*, pp. 172-194 (New Brunswick, NJ: Rutgers University Press, 1992). Also see Nakanyike Musisi, "Morality as Identity: The Missionary Moral Agenda in Buganda, 1877-1945," *Journal of Religious History* 23(1) (1999): 51-74.

(e.g., cooking, nutrition, needlework and hygiene).[133] As Nakanyike Musisi observes, "The methods and philosophy of the missionaries were greatly influenced by the ideologies of domesticity prevalent at the turn of the century in both Uganda and Britain."[134]

Such policies transformed the relationship of African men and women to capital. Men's labour placed them in the public (waged) arena while most women were confined to the private space as unpaid "domestic" performers. An example of a policy that underscored the gendered public/private divide was the taxation policy. The British colonialists introduced hut tax under the 1900 Buganda Agreement. Only men were subjected to the payment of hut tax, which forced them to cross over into the "public" labour market. Men who converted to Christianity that had previously been "caring for" unmarried women were forced to destroy their (the women's) huts as they could no longer afford to pay the tax for multiple dwellings.[135]

Criminal law was used to proscribe and punish all practices that ran counter to the heteropatriarchal-capitalist system and ideology of the family; it was vital to normalize women's roles as reproducers. Hence the Penal Code Act introduced crimes hitherto unknown to customary criminal law such as prostitution, adultery, bigamy, elopement, abduction with intent to marry, sex against the order of nature, procuration and abortion. In the same way, new concepts such as "age of consent" were introduced in criminal law, which imposed new gendered restrictions on young people's sexuality.[136] These crimes were painted with a heavy brush of immorality and constructed as being against natural law.[137] In this way, double standards were deployed in favour of men and to the

133. This pattern was not true for the whole of Africa. In southern Africa, for example, where men dominated in migrant labour, boys were only given minimum education designed to enable them to function as migrant workers. Girls, on the other hand, had access to more advanced education, albeit focusing on domestic skills. See Myles Osborne and Susan Kingsley Kent, *Africans and Britons in the Age of Empires, 1660–1980* (London: Routledge, 2015) at p. 53.

134. Nakanyike Musisi, "Colonial and Missionary Education," Note 132 at pp. 172–73.

135. John Roscoe, "Uganda and Some of its Problems," Note 92. The situation improved for such women when Hut Tax was converted into Poll Tax.

136. See Sylvia Tamale, "'How Old is Old Enough?' Defilement Law and the Age of Consent in Uganda," *East African Journal of Peace and Human Rights* 7(1) (2001): 82–100.

137. They all appear in the Penal Code Chapter XIV: "Offences Against Morality."

detriment of women, and selectively enforced. Many of these crimes are "victimless crimes" because there is no complainant or identifiable victim. They simply offend capitalist-patriarchal sensibilities in that, if left unpunished, such activities would compromise the interests of capitalism and heteropatriarchy. Take the "crimes" of prostitution and abortion—if not criminalized, both acts may potentially promote strong, autonomous women who can freely compete with men in the "public" sphere.

But while the law consolidated the public/private distinction, it was in large part absent from the so-called private sphere, particularly by way of supporting or protecting women and wives. The enforcement of the "conjugal order" was left to the family head, which largely translated into unchecked domestic violence towards women. Hence, colonial views of domestic violence were that such acts simply amounted to "chastisement" and an entitlement exercised by a husband in the same way as was done with children. Indeed, it is relatively recently, under the pressure of Ugandan feminists, that the Domestic Violence Act was passed and even then, its implementation is still pending, trapped by a reluctant state machinery and a largely hostile public.[138] Moreover, the law did not disrupt the colonial ideology of domesticity and the "naturalized" roles of women within the household. The colonialists generally failed to appreciate the roots and contexts of local culture and treated it as static and inflexible. The early missionaries treated culture as satanic and it was generally depicted as backward and primitive.[139] Modernity and the coloniality of being have kept such ideologies alive and well in today's Uganda, particularly through Pentecostal Christianity.[140] The next section examines some of the legal strategies that Ugandan feminists have deployed to challenge these so-called traditional family values.

138. See Domestic Violence Act, 2010.

139. Frederick Jjuuko and Edith Kibalama, *Culture and Women*, Note 102.

140. Barbara Bompani, "'For God and for my Country': Pentecostal-Charismatic Churches and the Framing of a New Political Discourse in Uganda," in Ezra Chitando & Adriaan van Klinken (eds.), *Public Religion and the Politics of Homosexuality in Africa. Religion in Modern Africa*, pp. 19-34 (Surrey: Ashgate Publishing, 2016). Also see Aníbal Quijano, "Coloniality and Modernity/Rationality," *Cultural Studies* 21(2-3) (2007): 168–178.

Challenging the Status Quo

The women's movement in Uganda has had quite a long history of challenging the concept embedded in women's traditional gender roles (as wives and mothers) as being foundational to a stable family and therefore, a stable nation. Consequently, they have advocated for a different type of nationalism that views women not simply as wives and mothers but as individuals with agency. They have spearheaded a "Family Law Movement" determined to transform domestic relations and the rights of women.[141] This movement dates back to the early years of nation-building when women began agitating for social change. In January 1964, at the insistence of the Uganda Council of Women, the newly-independent government of Uganda established the Commission on Marriage, Divorce and the Status of Women (the Kalema Commission).[142] Its terms of reference required the Commission "to consider the laws and customs regulating marriage, divorce and the status of women in Uganda, bearing in mind the need to ensure that those laws and customs, while preserving existing traditions and practices, as far as possible, should be consistent with justice and morality… and to make recommendations."[143] One year later, the report of the Commission was published with several progressive recommendations related to marriage, divorce, children and inheritance.[144] However, most of them were ignored and the struggle to transform family law continues to date. The discussion

141. Vibeke Wang, "Women Changing Policy Outcomes: Learning from Pro-Women Legislation in the Ugandan Parliament," *Women's Studies International Forum* 41(2) (2013): 113-121.

142. Despite the fact that it was women who agitated for this investigation, the seven-member commission set up by the government of Uganda included only one woman (Marjorie Kabuzi) and was chaired by Hon. William Kalema. The sample population on which the study was based consisted of 87.6% men and 12.4% women. Some of its recommendations reinforced patriarchal biases but it also had some progressive recommendations. See Sylvia Tamale, "Law Reform and Women's Rights in Uganda," *East African Journal of Peace and Human Rights* 1(2) (1993): 164-194.

143. Reproduced by Rhoda Kalema, "It is vital to register marriages" *New Vision*, December 2, 2003 at p. 29 & 32.

144. See William W. Kalema, *Report of the Commission on Marriage, Divorce and the Status of Women, 1965* (Kampala: Uganda Government Printers, 1965). Some of the recommendations were incorporated in the Succession (Amendment) Decree of 1972 and the Administration of Estates Decree of the same year. Also see Winfred Brown, *Marriage, Divorce and Inheritance: The Uganda Council of Women's Movement for Legislative Reform* (Cambridge African Monographs: African Studies Centre, 1988).

that follows examines the trajectory of three different legal attempts that have been undertaken by the women's movement in their quest to transform family law in Uganda. It also examines the enactment of the Domestic Violence Act as part of these efforts. The discussion clearly exposes the institution of the family as the locus of gender, class, sexuality and above all, political struggle.

The Domestic Relations Bill and its Successors

The Domestic Relations Bill

In 2003—through the Domestic Relations Bill Coalition—Ugandan feminists resurrected the ghost of the controversial Kalema Report in the form of the Domestic Relations Bill (DRB).[145] The bill proposed to introduce a new and more egalitarian legal regime governing family relations in Uganda.[146] Seeking a total overhaul of domestic relations in the country, the bill addressed, *inter alia*, legal recognition of the following: the property rights of married and cohabiting women; women's non-monetary contribution as wives, mothers or cohabitees; women's right to negotiate sex on health grounds; and the concept of "irretrievable breakdown of marriage." The bill also provided for: the prohibition of "widow inheritance," spousal rape and female genital cutting; vetoing bridewealth as an essential element of marriage; criminalization of the refund of dowry; and the introduction of conditions to be fulfilled before a polygynous man can take on subsequent wives (e.g. proof of economic capability, keeping wives in separate homes, treating all wives equally and seeking the consent of existing wife or wives). In short, the bill was threatening to disrupt the basic heteropatriarchal-capitalist arrangements where the majority of women were exploited, subordinated and oppressed.

It took almost two years for the DRB to reach Parliamentary

145. See Bill 21 of 2003. Text is available at: https://www.parliament.go.ug/cmis/browser?id=b10efb92-e493-4e05-ae53-cbfc275314ae;1.0 [accessed Feb 6, 2020]. Appendix 1 of the Bill contains a list of the 43 organizations that made up the DRB Coalition.

146. See Uganda Women's Network, *Gender Transformation and Empowerment: The Domestic Relations Bill and The Poverty Eradication Action Plan, Exploring the Linkages* (Kampala: UWONET, 2004).

Committee stage when the legislative House sits in plenary to discuss the intricate details of the proposed law. An intense backlash immediately brewed up against the controversial bill both within and outside parliament. The Committee on Legal and Parliamentary Affairs launched a scathing attack on the contents of the bill.[147] Parliament received numerous petitions including those from the Uganda Muslim Supreme Council and the Uganda Joint Christian Council.[148] The general public was also unrelenting in its attack. The "letters to the editor" pages of local newspapers were awash with condemnation of the bill: one proclaimed that for President Museveni to endorse the DRB will "not only be suicidal but also a disservice to society and our nation."[149] The heteropatriarchal family had to be preserved. On 29 March 2005, hundreds of women (the majority of whom were covered in hijabs) took to the streets of Kampala to demonstrate against the proposed law. Describing it as a "coup against family decency," the status quo activists swore to oppose the passing of the proposed law. Patriarchal cultural leaders were totally behind the protestors.[150] The Muslim leadership claimed that the DRB was "haram" and called for a jihad against it. To make matters worse, there was no consensus among women MPs themselves regarding all the provisions of the DRB.[151] Elsewhere, I have dissected some of the reasons which dictated the fate of the DRB:

> Ugandan legal feminists who were left agape, scratching their heads, learnt a few lessons about the limitations of using the legal reform strategy in achieving gender equity on family and sexuality matters. A significant message that was put across to the women's movement

147. Sylvia Tamale, "The Right to Culture and the Culture of Rights: A Critical Perspective on Women's Sexual Rights in Africa," *Feminist Legal Studies* 16(1) (2008): 47–69

148. Manisuli Ssenyonjo, "The Protection of Women's Human Rights by Domestic Courts in Africa: A Perspective from Uganda," in M. Ssenyonjo (ed.), *The African Region Human Rights System: 30 Years After the African Charter on Human and People's Rights*, pp. 355-398 (Leiden, MA: Martinus Nijhoff Publishers, 2012) at pp. 380-82.

149. See Yasiin Mugerwa, "DRB a Coup Against Family Decency," *The Monitor*, May 7, 2005.

150. For example, see "Buganda Supports Muslims on DRB – Muliika," *Daily Monitor*, July 7, 2006. Daniel Muliika was the *Katikkiro* (prime minister) of the Buganda kingdom at the time.

151. For example, the issues of marital rape and cohabitation proved too controversial among members of the Uganda Women Parliamentarians Association (UWOPA). See Kennedy Oryema, "Women MPs Split Over DRB," *New Vision*, April 27, 2005.

was never to take for granted, ignore or erase the complexities and contradictions of women's realities. The core values of our societies to engender transformation need to be invoked; find those values that resonate from Indigenous cultures that will speak to the rights repertoire, as feminists know it. The women who participated in the protest march were obviously not reading from the same page as the legal feminists and they rejected being subjected to what they perceived as the straightjacket of legalism. It was not a case of 'false consciousness'[152] as some people would have us believe, but an 'alternative consciousness' borne out of their perceptions and lived experiences. They were not willing to risk further abuse by rejecting deeply entrenched beliefs on such a sensitive facet of their lives.[153]

Despite intensive lobbying and networking by the DRB Coalition, the bill was never going to see the light of day and the door was slammed on any hopes of bolstering women's family rights in Uganda. The timing of the debate was not accidental either as it fell just months to the 2006 presidential and parliamentary elections. Reassuring the agitated public that the controversial law would not be passed became a strategic and powerful issue of President Museveni's election campaign message. He said, "It [the DRB] has raised a lot of public outcry and it is something which [is] not urgently needed… it will be brought back after some consultations."[154] The political character of a bill that touched upon seemingly "private" apolitical, domestic issues was brought out in bold relief. The proposed law threatened to disrupt the sociopolitical status quo and it could not go past the male-dominated parliament. Eventually, the DRB was shelved and later

152. "False consciousness" is a Marxist notion that capitalist relations are maintained partly by the oppressive ruling class convincing the masses that existing power relations are natural and the latter serving the interests of the ruling class without being aware that they are doing so. Radical feminists in the West have used this term to describe the consciousness of women who "capitulate" to patriarchal culture.

153. Sylvia Tamale, "The Right to Culture," Note 147 at p. 60. A sampling of the banners that the demonstrators carried speaks volumes about their fears and predictions: "The DRB Contradicts Islam", "Don't Force us into Terrorism", "The Koran is the Constitution of Allah." Also See J. Etyang and M. Nalunkuuma, "Muslims Insist on Polygamy," *New Vision*, March 30, 2005.

154. See William Rwebembera, "Home Bill May Wait – Museveni," *New Vision*, April 28, 2005.

metamorphosed into a watered-down version, renamed the "Marriage and Divorce Bill."

The Marriage and Divorce Bill

After the DRB was shelved, the DRB coalition regrouped and continued to lobby for the revision of the sexist family laws. Thus, Government decided to split the DRB into two, along religious lines, in order to make the law more "palatable" and less controversial.[155] The Marriage and Divorce Bill (MDB) limited its scope to non-Muslims while the Administration of Muslim Personal Law Bill (AMPB) was reserved for Muslims. Five years after the DRB had stalled, on December 22, 2010—again, just a few months to the 2011 presidential and parliamentary elections—the MDB was tabled in parliament.[156] The debate on the MDB proposals by the House Committee commenced in March 2011. The name of the proposed law was immediately attacked for placing marriage and divorce in the same breath; Catholics argued that "marriage and divorce do not mix."[157] Once again, arguments about the bill undermining traditional and religious (read colonial) understandings of marriage reared their ugly head and a repeat of the contentions that beset the DRB were set into motion. The old controversies were reignited with the most intense heat generated by issues relating to marital rape, cohabitation, dowry and matrimonial property.

In his speech to commemorate International Women's Day that year, President Museveni reiterated that men and women were equal but went on to sound a warning that the bill must be handled with "extra care" as it could cause disharmony in the country.[158] Four days later, a group of male MPs stormed out of parliament

155. See Uganda Women's Parliamentary Association (UWOPA), *Uganda Women Parliamentary Association Annual Report, July 2008-2009*, UWOPA, Kampala. This was despite government's earlier rejection of the idea of having two separate laws as it would be "contrary to the national interest of building a strong, united and harmonious Country." See Attorney-General's statement to parliament on the Domestic Relations Bill, *Official Hansard*, 16 June 2005.

156. See Manisuli Ssenyonjo, "The Protection of Women's Human Rights," Note 148.

157. See David Lumu, "Voters Reject Marriage Bill," *The Observer*, March 24, 2013.

158. See Francis Kagoro, "Museveni Advises on Marriage and Divorce Bill," *New Vision*, March 9, 2013.

demanding an immediate suspension of the "controversial Bill."[159] Speaker Rebecca Kadaga called for an impromptu two-week hiatus to allow MPs return to their constituencies in order to "consult the voters" about the bill.[160] When parliament resumed a fortnight later, the overwhelming majority of MPs proclaimed that the MDB had been firmly rejected by *wananchi* in their constituencies. Some even brought to parliament video footage of the stormy consultative *barazas* (public meetings) they held.[161] MP Rose Akello reported, "They [constituents] are against the Bill and they have told me that if they hear that I am pro that Bill, that will be the end of my political career."[162] MP Wafula Oguttu reinforced Akello's argument:

> Everywhere I have been told to return to Parliament and oppose the Bill instead of wasting their time with useless and dangerous *bazungu* [Western] ideas of rich educated women in Kampala… Me thinks that the 47-year-Bill might be headed for more shelving. Our various cultures are just not ready as yet to peacefully coexist with many ideas in that Bill. Several men told me to my face that if need be they will kill should the bill be passed in law.[163]

MP Milton Muwuma informed parliament that the bill was unpopular in all the four sub-counties of his constituency: "they said the Bill was not a priority. They want us to improve their household income, fix roads, provide affordable electricity and water."[164] Sadly, these voters could not connect the dots to see the link between poverty and intra-family inequities and tensions. Church leaders petitioned parliament to halt debate of the MDB until (yet) more

159. See Mercy Nalugo, "Male MPs Plot to Delay Marriage Bill, *Daily Monitor*, March 13, 2011.

160. See Michael Wambi, "Male MPs Walk Out of Marriage Bill Debate," *URN*, February 28, 2013, available at: https://ugandaradionetwork.com/story/male-mps-walk-out-of-marriage-bill-debate [accessed Dec 30, 2019].

161. E.g., Hon. Abdu Katuntu, see David Lumu, "Voters Reject Marriage Bill," *The Observer*, March 24, 2013.

162. See David Lumu, "Voters Reject Marriage Bill," ibid.

163. Quoted from his Facebook page, see David Lumu, "Voters Reject Marriage Bill," *The Observer*, March 24, 2013.

164. See Moses Mulondo, John Odyek and Carol Natukunda, "Most Ugandans Against Marital Bill—Survey," *New Vision*, online at: http://www.newvision.co.ug/mobile/Detail.aspx?NewsID=641241&CatID=1 [accessed on July 29, 2015].

consultations were conducted.[165] It should be noted that recourse to the ruse of "public consultations" in Uganda is used by politicians as a tool to simply stall reform. Women's family rights are so fundamental that they cannot be subjected to any form of referendum or public bidding. Issues of family law are so fundamental to gender justice that they should be considered as non-derogable and never be subjected to the whims of a patriarchal chauvinist public. By mid-2011, the momentum for the MDB had waned and once again the bill was placed in legal limbo, waiting for round four of the battle.

The Administration of Muslim Personal Law Bill

As we have seen, Muslims put up a stiff resistance against the DRB, arguing for Shari'a law to govern issues of marriage and divorce for the Muslim community in Uganda.[166] The Uganda Law Reform Commission responded by consulting with the male-dominated Uganda Muslim Supreme Council before drafting the Administration of Muslim Personal Law Bill of 2008.[167]

In essence, the Bill seeks to operationalize Article 129(1)(d) of the Constitution which provides, *inter alia*, for "qadhi's courts for marriage, divorce, inheritance of property and guardianship" for the Muslim community. Once in place, the qadhi's courts would apply Shari'a Law to all "personal law" issues relating to marriage, divorce, inheritance, child support, domestic violence, and so forth. Muslims applauded the parallel "personal law" that "would not conflict with Islam."[168] However, the Bill includes a rather strange provision which directs that "Sharia law" applicable in Qadhi's courts must be in line with the Constitution.[169] Such a provision is bound to trigger further controversy due to the contradictions and

165. See Henry Sekanjako and Joyce Namutebi, "Matembe Blasts Clerics over Marriage Bill," *New Vision*, March 21, 2013.

166. See Nsereko Mutumba, "Sharia Law Inevitable in Uganda's Legal System," *New Vision*, October 12, 2008.

167. Jamil Mujuzi, "The Entrenchment of Qadis' Courts in the Ugandan Constitution," *International Journal of Law, Policy and the Family* 26(3) (2012): 306-326.

168. See Al Mahdi Ssenkabirwa, "Muslims Happy with Law Commission's Marriage Proposals," *Daily Monitor*, September 6, 2008.

169. See Clause 2(3) of the Administration of Muslim Personal Law Bill, 2008.

tensions that exist between Shari'a and the Constitutional ideals. That may be one of the reasons why the draft law has not yet made its way to parliament for its first reading.

The Domestic Violence Act

Violence in the family setting is a global phenomenon that transcends all national borders as well as socioeconomic, class, racial, ethnic, religious and cultural distinctions.[170] The current divorce law makes it extremely difficult for Ugandan women to break free from abusive marriages. For example, the grounds-based divorce regime in civil marriages where a petitioner has to prove "fault" on the part of their partner is problematic. Some of the defences open to a contesting party under the fault theory of divorce include collusion, connivance and condonation.[171] If, for example, a spouse proves in court that their partner continued having sexual relations with them after knowing about their adultery, their petition will be dismissed by court. This is particularly unrealistic and unfair to wives given the power dynamics and her relative negotiating capacity within the family structure on issues of sexuality. Furthermore, there is a mandatory six months "cooling-off" period (designed for reconciliation and preservation of marriage) before the final divorce decree is granted by courts. Uganda's divorce law was based on England's 1857 Divorce Act, which was framed to discourage divorce.[172] This is not surprising given the centrality of heteropatriarchal marriages to capitalist structuralist dynamics.

The requirement to refund dowry in order to effect a "customary" divorce had also kept many women stuck in abusive marriages

170. Fareda Banda, *Women, Law and Human Rights* (Oxford: Hart Publishing, 2005); Cynthia Bowman and Akua Kuenyehia, (eds.), *Women and Law in Sub-Saharan Africa* (Accra: Sedco Publishing, 2003); and Rebecca Cook (ed.), *Human Rights of Women*, Note 2.

171. See Sections 6 and 7 of the Divorce Act (Cap 249). But more recently, courts have embraced the more expansive concept of "irretrievable breakdown of marriage." See Maria Nassali, "Unfaithful Love: A Critical Analysis of Adultery and Divorce Law in Uganda," in Maria Nassali (ed.), *The Politics of Putting Asunder: The Family, Law and Divorce in Uganda*, pp. 53-107 (Kampala: Fountain Publishers, 2017).

172. Gail Savage, "Divorce and the Law in England and France Prior to the First World War," *Journal of Social History* 21(3) (1988): 499-513.

because their families would not be in a position to refund it.[173] Statistics show that women are subjected to domestic violence significantly more often than men; the 2006 Uganda Demographic and Health Survey (UDHS) revealed that up to 60 percent of women in Uganda aged 15 and above had experienced gender-based violence.[174] This does not come as a surprise given the gender/power relations that pertain in the familial domain. Violence within the domestic arena has become a tool for men to assert their social and structural power while maintaining the subordinate status of women. The fact that such a pervasive issue does not appear as a topic on the reading lists of mainstream family law courses in Uganda is shocking and means that law graduates are often ill-equipped to deal with it in both their personal and professional lives. Its omission leaves a significant gap in the course syllabus/structure.

Part of the reason why the issue of domestic violence did not feature in any public arena, let alone the lecture room, was because culturally and legally it was considered a "private" matter. The constitutions that preceded the 1995 Constitution expressly allowed for gender discrimination when it exempted personal (private) laws from the operation of the nondiscrimination principle. This effectively supported laws that were discriminatory with respect to "adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law."[175] The women's movement challenged this constitutionally-sanctioned gender discrimination in the Constituent Assembly.[176] Hence, the 1995 Constitution specifically outlawed sex-based discrimination setting the stage for feminists to tackle one of the most entrenched and pervasive forms of violence by advocating and lobbying for a law that specifically addressed domestic violence. A coalition on domestic violence was formed in 2006 and worked in close association with the Law

173. Thanks to the *Mifumi* decision, this was rendered illegal (Note 99).

174. UBOS, *Uganda Demographic and Health Survey 2006* (Kampala; Uganda Bureau of Statistics—UBOS, 2007). Also see Zahara Nampewo, "Till Violence Do Us Part: A Critical Analysis of the Legal Regime on Cruelty as a Ground for Divorce in Uganda," in Maria Nassali (ed.), *The Politics of Putting Asunder*, Note 171 at pp. 108-151.

175. See, for example, Article 20(4)(d) of the 1967 Constitution.

176. Sylvia Tamale, *When Hens Begin to Crow: Gender and Parliamentary Politics in Uganda* (Boulder, CO: Westview Press, 1999).

Reform Commission, the Ministry of Gender, Labour and Social Development, the Uganda Women's Parliamentary Association (UWOPA) and other stakeholders to make this goal a reality.

The Domestic Violence Act was finally passed by Parliament on November 11, 2009, becoming law a year later. The passing of the law was seen as a victory for women's and children's rights. A decade since its enactment, however, has clearly revealed that the unenforced law is not worth the paper on which it is written. Despite the promise that the law held, ultimately it was enacted within colonial structures of power and therefore guaranteed the continuity of gender-based inequities and injustices in the family institution. Although the law offered some relief by expanding jurisdiction over domestic violence cases to local council courts, thus easing access to grassroots populations, the patriarchal nature of these institutions was never going to deliver justice against family violence. Moreover, the punitive logic that pervades the law goes against traditional conflict resolution methodologies and Indigenous approaches to domestic disputes that were destroyed by colonialism. It alienates and silences the victims of violence. Perhaps a law that integrates the informal amicable ways that involve mediation by clan members would be more effective than open court confrontational litigation.

Uganda's decolonial turn for gender justice should involve rethinking the institutions of marriage and family, exploring our Indigenous mechanisms for healing gender relationships and restore the dignity of men and women. For instance, in resolving domestic violence, instead of running to the criminal justice system, resorting to the tradition of *kunoba* would allow for a cooling-off period that makes room for a conciliation process, facilitated by experienced clan elders. Other examples of a return to Indigenous practices include: the de-stigmatization and demoralization of the so-called "illegitimate" children, born out of wedlock; and the embracing the concept of "twinness" which validates and affirms complementarity as a necessary part of the whole—values that are common in many non-Western knowledge systems around the world.[177]

177. See Marimba Ani, *Yurugu, An African-Centered Critique of European Cultural Thought and Behavior* (1st ed.), pp. 104-108 (Trenton, NJ: African World Press Inc, 1994); and Dawn

The Limits of Officialist Approaches to Family Gender Justice

Marginalized groups—including women's rights organizations in Uganda—have been increasingly relying on public interest litigation (PIL) as an effective tool for achieving more equitable and socially-just policies.[178] PIL cases challenge the constitutional propriety of government laws, policies and practices. When such laws and practices relate to domestic relations which, as we have seen, are profoundly political, they stir up considerable controversy. But the critical question is whether PIL engenders actual transformation for grassroots women in Uganda. In the past, where Ugandan women have successfully deployed family law related PIL, it has reconciled women activists and the wider community to the collective support of gender justice. For example, the Constitutional Court did not hesitate to declare as unconstitutional the colonial 1904 divorce law that applied double standards for husbands and wives. In the case of *Uganda Association of Women Lawyers and Others v. Attorney General,*[179] Court reiterated that:

> [T]he rights of women are inalienable, interdependent human rights which are essential in the development of any country and that the paramount purpose of human rights and fundamental freedoms is their enjoyment by all without discrimination which discrimination is manifest in The Divorce Act. The concept of equality in the 1995 Constitution is founded on the idea that it is generally wrong and unacceptable to discriminate against people on the basis of personal characteristics such as their race or gender.[180]

The list of successful judgments for women since the promulgation of the women-friendly Constitution in 1995 is quite

Ieriho: Kwats Avery, "Tékeni – Two Worlds, Many Borders: A Look at Classical Native Music through Indigenous Eyes," *MUSICultures* 39(1) (2012): 129-168.

178. See J. Oloka-Onyango, *When Courts do Politics: Public Interest Law and Litigation in East Africa* (Newcastle upon Tyne: Cambridge Scholars Publishing, 2017). Also see Adrian Jjuuko, *Strategic Litigation and the Struggle for Lesbian, Gay and Bisexual Equality in Africa*, (Ottawa: Daraja Press, 2020).

179. *Uganda Association of Women Lawyers and Others v. Attorney-General* [2004] UGCC 1.

180. Per Justice of Appeal, Alice Mpagi-Bahigeine.

impressive and growing. To mention but a few: *Uganda Association of Women Lawyers (FIDA-U) v. Attorney General*[181] (divorce); *Law and Advocacy for Women in Uganda v. Attorney General* (*LAW-U I*)[182] (criminal adultery, succession & domicile); *Law and Advocacy for Women in Uganda v. Attorney General (LAW-U II)*[183] (FGM); and *Julius Rwabinumi v. Hope Bahimbisomwe*[184] (matrimonial property).

While the PIL successes have been quite remarkable and dramatic, the strategy is fraught with contradictions and limitations. Given the limited utility of the formal judicial system by *wananchi* as well as the inadequacy of the neoliberal human rights approach to women's oppression, the efficacy of PIL becomes questionable.[185] Such limitation was clearly demonstrated when Ugandan feminists challenged the discriminatory provisions in the laws on criminal adultery and succession. The Constitutional Court, in the case of *Law and Advocacy for Women in Uganda v. Attorney General (LAW-U I)*, struck down criminal adultery law that targeted wives but not husbands. Theoretically, the court removed the double standards employed in this penal provision, promising to close off one avenue for the abuse, abandonment and even domestic violence against women. In reality, the decision only made a small dent towards the decolonial turn for Ugandan women. My search in the court registries did not reveal any spike in male adultery prosecutions post the *LAW-U I* judgment. And that was certainly not on account of a drop of infidelity among Ugandan husbands. So, while feminists popped champagne to celebrate the striking down of a colonial sexist concept, it was business as usual as the patriarchal structures that support unequal power relations remained untouched. At best, the judgment benefited women who can afford to run to formal courts and claim their rights; the majority simply can't.

In the same judgment of *LAW-U I*, several discriminatory provisions were struck down in the Succession Act. One such

181. Const. Petition No. 2 of 2003, [2004] UGCC 1.

182. Constitutional Petitions Nos. 13 of 2005 and 05 of 2006 [2007] UGCC 1.

183. Const. Petition No. 8 of 2007 (Unreported).

184. Civil Appeal No. 10 of 2009 (Unreported).

185. See Chapter Six for a detailed discussion of the limits of the struggle for "gender equality" in Africa.

provision was section 26 which guaranteed the widows' right of occupancy in the residential house on the passing of their spouses. Feminists challenged the unconscionable condition which specified that such right would end for widows once they remarried, a condition that did not extend to widowers. However, when the court struck down section 26 as being discriminatory, it unwittingly nullified the widow's right to occupy the residential holding. More than a decade since the *LAW-U I* decision, parliament has not amended the law to cure the gap left for Ugandan widows.

Several PIL cases have been filed in defence of the rights of sexual minorities. In the case of *Victor Mukasa and Yvonne Oyo v. Attorney General,*[186] the High Court reiterated the right of privacy and freedom from torture, cruel, inhuman and degrading treatment for the lesbian petitioners who had complained about the mistreatment they had suffered at the hands of government law enforcement agents. Similarly, in the case of *Kasha Jacqueline & Others v. Muhame & The Rolling Stone Publications Ltd,*[187] the High Court upheld the right of homosexuals to the fundamental rights of privacy and human dignity. I have already mentioned the successful petition against the AHA in the Constitutional Court case of *Oloka-Onyango & Others v. AG*.[188] The law which put in place Equal Opportunities Commission (EOC) also violated the rights of sexual minorities by including a provision prohibiting the Commission from investigating issues considered "immoral and socially harmful or unacceptable by the majority."[189] The parliamentary record left no doubt that legislators targeted sexual minorities with this eleventh-hour insertion. Those who engineered its inclusion in the law feared that the broad mandate of the EOC would be used to "promote" homosexuality in the country.[190] Section 15(6)(d) is a classic case of majoritarian oppression and exposes the exceptionalism intrinsic

186. High Court Miscellaneous Cause 247 of 2006; [2008] AHRLLR 248.

187. High Court Miscellaneous Cause 163 of 2010 (unreported).

188. [2014] UGCC 14.

189. See Section 15(6)(d) of the Equal Opportunities Commission Act, 2007. Also see *Jjuuko Adrian v. Attorney General*, Constitutional Petition No. 1 of 2009 (Unreported).

190. The Minister of Gender, Labour and Social Development, Hon. Syda Bumba said, "On the amendment on immoral behaviour or generally unacceptable conduct by the majority of our people, it is very important that we include that clause. This is because the homosexuals and the like have managed to forge their way through in other countries by identifying with minorities." See *Official Hansard*, December 12, 2006.

in Western conceptualizations of rights. The Constitutional Court struck out section 15(6)(d), declaring it unconstitutional by "creating a class of social misfits" in Ugandan society. While all these cases registered remarkable gains for sexual minorities, least of which was unleashing same-sex relations out of the legal closet, little has changed on the ground for Ugandans with non-conforming sexualities and gender identities.[191] In sum, the light that these PIL cases shone at end of the tunnel was dimmed out by the ubiquitous presence of the colonial section 145 in the Penal Code which criminalizes "carnal knowledge against the order of nature."

Courts have repeatedly called upon parliament to revise family laws so that they reflect the changing socioeconomic and cultural changes in the country. In 2013, for instance, in the case of *Rwabinumi v. Bahimbisomwe,* the Supreme Court urged lawmakers to enact a law that deals with matrimonial property "based on the principle of equal treatment of husband and wife."[192] The fact that parliament has not acted to reform any of the many challenged laws in order to align them with the Constitution speaks volumes of the lack of political will on the part of neocolonial patriarchal state to transform family relations in Uganda. In any case, processes of law reform without tackling the structural and institutional foundations of gender hierarchization, as well as the coloniality of power that pervades familial gender relations, would basically amount to an exercise in futility.

In sum, no amount of legal reform without dismantling structures of power or the persistent paradigms that support them will engender social transformation in family relations. The Ugandan constitution, like those elsewhere on the continent, is inscribed in the tradition of Western liberalism with a bill of rights that emphasizes individual rights. As the PIL examples cited above demonstrate, turning to colonial laws to liberate social groups such as women has proved ineffective, even damaging in as far as it gives the false impression of *real* progress. Through law reform, Ugandan

191. See Sexual Minorities Uganda (SMUG), *And That is How I Survived Being Killed: Testimonies of Human Rights Abuses from Uganda's Sexual and Gender Minorities* (Kampala: SMUG, 2015), available at: https://sexualminoritiesuganda.com/wp-content/uploads/2016/04/And-Thats-How-I-Survived_Report_Final.pdf [accessed December 30, 2019].

192. See Judgment by Justice Esther Kisaakye in *Julius Rwabinumi v. Hope Bahimbisomwe*, Civil Appeal No. 10 of 2009 (unreported).

feminists are attempting to rewrite dominant discourses using the very same colonial mechanisms and ideologies used to dominate them.[193] It is equivalent to using the Master's tools to dismantle the Master's house. It is easy to pay lip service to the cause of oppressed minorities when laws are symbolically amended without disrupting the substructure or dominant paradigm on which they are constructed. The shifting of normative frameworks of inequality without challenging the systems within which they are embedded will not result in fundamental transformation. The experiences and lives of the majority of Ugandan women simply cannot be legitimated through colonial legal discourses. Incarceration of their abusive husbands, for example, would exacerbate instead of ameliorating their problems. Many feminist scholars of decoloniality have argued against deploying the strategy of legal reform or pursuing penal processes which end up re-victimizing women.[194] As vital cogs in the vast machinery of heteropatriarchal-capitalism, domesticity and the family institution are protected. Legal interventions on their own cannot shake the colonial and material roots that support domesticity and the family institution. But Ugandan households and family structures are rapidly changing and with them, the expectations of women.

The Changing Family Structure

Traditional family and marriage arrangements prior to colonialism were not only diverse but were also set up to address the realities and needs of the time. Today's monolithic heteropatriarchal families/marriages do little to address the realities on the ground. Instead, they exacerbate inequalities and exclusions and are impervious to changing economics, demographics and values. They are unable to address the emerging trends and challenges within households. In particular, the heteropatriarchal family was not created to service the needs of the populations that they were

193. Josef Estermann, "Colonialidad, Descolonización e Interculturalidad. Apuntesdesdela Filosofí´a Intercultural," *Polis, RevistaLatinoamericana* 13(38) (2014): 347–368. Cited in Silvana Tapia Tapia, "Sumak Kawsay, Coloniality and the Criminalisation of Violence against Women in Ecuador," *Feminist Theory* 17(2) (2016): 141-156 at p. 145.

194. See e.g., Laureen Snider, "Feminism, Punishment and the Potential of Empowerment," *Canadian Journal of Law and Society* 9(75) (1994): 75–104.

imposed on but to serve the economics and interests of the colonialists.

As is the case elsewhere in the world, family structures in Uganda are changing rapidly due to a number of factors. Global trends as well as local policies have greatly affected family relations and marriage patterns. Most significantly for Africa are the neoliberal economic policies that have been imposed on the continent by multilateral financial institutions such as the World Bank and the International Monetary Fund (IMF). Since the 1980s, such policies have materialized on the continent as structural adjustment programmes (SAPs) and translated into the institutionalization of the market model of economic growth. Economies were liberalized, with free market policies that prioritized deregulation, privatization, downsizing public bureaucracies, cost-sharing and reducing government subsidies. The real detrimental outcomes of such policies for *wananchi* included the following: an end to accessing quality and affordable healthcare and education; loss of income; spiraling unemployment; rising poverty levels; and an increasing gap between the haves and have-nots. And, significantly, women took the brunt of the debilitating SAPs.[195] The disparate impact that SAPs had on women not only exacerbated the problem of feminization of poverty but also violence against women within families. It is interesting that at the precise time that the international community was celebrating major global wins in women's rights through the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW-1981), the Plan of Action for the International Conference on Population and Development (ICPD-1994) and the Beijing Platform for Action (BPA-1995), what was being given/ceded by universal capitalism on one hand, was being rapidly taken away with another.

Furthermore, the capitalist neoliberal policies have led to an escalating number of insecure landless people, increased cost of living, rapid rural-urban migration and an increasingly oppressive and socially disengaged state machinery—all of which have affected

195. See Deborah Kasente, "Gender and Social Security Reform in Kampala," *International Social Security Review* 53(3) (2000): 27-41; and Warren Nyamugasira, "Structural Adjustment, Land Reform, and Disenfranchisement in Uganda," *Development in Practice* 6(4) (1996): 347-351.

the way people live.[196] At the same time, higher life expectancy and the enhanced awareness of women's rights have also influenced families. And, like cultures, family values evolve and shift with altering contexts, especially when exposed to different ideals, education, and technologies. Issues of marriage age, fertility and household sizes have been radically altered by these changes.

Given the above developments, it is today impossible to hang onto the same values that informed our norms and practices one century back. Take the example of the institution of bridewealth and how it has evolved over the decades from constituting marriage gifts that symbolized a sociopolitical link between the families/clans of the contracting parties to today's commercialized transaction, which has led to the perception of women as a "commodity."[197] Some of the other changes that we have witnessed in the Ugandan family structure over the years include: the whittling down of broad family residential patterns and relations, particularly in urban areas; the increase in single-parent households; the emergence of child-headed households; increasing numbers of cohabiting partners; the introduction of contracts of surrogacy; and a large number of women working outside the home in the formal and informal sectors. Most women who juggle the demands of career and family understand that the traditional family structures (both the nuclear/colonial and the "extended"/African one) are no longer sustainable and feel an acute need for change.

The changes catalogued above do not augur well for heteropatriarchal-capitalist norms and expectations. There has been a marked increase in the types and frequency of domestic violence, not only in Uganda, but around the continent. Under neoliberalism, the family exists in a totally different context where everything has been marketized, children are finding it harder and harder to leave their parents' homes and become financially

196. James Ntozi and Samuel Zirimenya, "Changes in Household Composition and Family Structure during the AIDS Epidemic in Uganda," in J.C. Caldwell, I.O. Orubuloye and. J. P. M. Ntozi (eds.), *The Continuing African HIV/AIDS Epidemic*, pp. 193-209 (Canberra: Health Transition Centre, Australian National University,1999). *Cf.* Göran Therborn (ed.), *African Families in a Global Context* (Research Report No. 131) (Uppsala: Nordiska Afrika Institutet, 2006).

197. See dissenting judgment by Justice Esther Kisaakye in the case of *Mifumi & Ors v. Attorney General and Anor*, Note 99.

independent and the very poor are being pushed to humiliating indignities. Under such circumstances, we cannot delink the everyday structures of violence to neoliberalism (despite its cooptation of the language of women's rights). The intensity of violence must be seen in the context of the severe strains generated by finance capital. Furthermore, having more rights-aware women in the waged labour sector inevitably shifts relations from the colonial gender roles of a breadwinner husband and a financially dependent wife.

It is therefore not surprising that the changes in the colonial family model are taking place against the backdrop of a growing presence of conservative fundamentalist forces globally. Most particularly, the resurgence of religious and cultural fundamentalism has facilitated a stiff resistance to the changing family structure and relations. In other words, heteropatriarchal capitalism still requires women's unpaid domestic labour and is therefore pushing back through a reinstatement of the Christian colonial gender roles. Hence the number one agenda of the fundamentalist movements is to maintain colonial heteropatriarchal family values; it is a bid to ensure that colonial family law remains static in the face of the evolutions within the family structures. When today's politicians and religious leaders call for a return to "traditional family values," it is not a mere expression of a nostalgic sentiment, but a projection of a coherent and systematic capitalist-patriarchal agenda. Traditions, as Anne MacClintock reminds us, "are both the outcome and the record of past political contests, as well as the sites of present contest."[198] The disintegration of traditional family forms is very much a result of power contestations and continuous change.

An understanding and appreciation of these facts would clearly explain the developments in the Ugandan political arena and legislative agenda. It explains the decades-long resistance to the bills amending domestic relations,[199] the passing of the Anti-Homosexuality Act in 2014, and the foot-dragging in implementing

198. Anne MacClintock, "Family Feuds: Gender, Nationalism and the Family," *Feminist Review*, 44 (1993): 61-80 at p. 78.

199. See Jeff Lule, "Women MPs, CSOs want Marriage Bill Enacted into Law," *New Vision* (June 18, 2018), available at: https://www.newvision.co.ug/new_vision/news/1479922/women-mps-csos-marriage-enacted-law [accessed Nov 28, 2019].

the Domestic Violence Act, *inter alia*. It would also explain the incongruence between government rhetoric that claims to support gender equality policies and actual practice which clearly operates to undermine them. Why, for example, hasn't the legislature moved to amend family laws so that they comply with the Constitution as instructed by the courts in various cases? What will it take for the law to catch up with the upheavals that have taken place in the traditional family structures? Can the post-colonial state, characterized by coloniality, deliver in changing colonial laws? Will the male-dominated parliament alter heteropatriachal laws which benefit them?

There is a need to delink the African family from its colonial heteronormative nuclear ideals. The African decolonization and decolonial agendas will never be achieved without adopting progressive strategies for women's liberation from the oppressive family institution. Such action entails acknowledging the diverse family/marriage arrangements that existed in pre-colonial African societies and critically engaging with the imported notions of "family" introduced by the colonialists for their own interests. In particular, the teaching of family law should clearly disclose the entanglement of "the family" with multiple relations of geopolitical and economic power. Africa's reframed and decolonial family should embrace the complexities of the continent's ever-changing societies and their contemporary realities of diversity.[200] African feminists should rethink the efficacy of law reform as a pathway for engendering gender justice and increase sensitivity to the colonial nature of the law. The family must cease to be an instrument of capitalism and gender oppression and be reconceptualized to fit the desires and interests of the *wananchi*. Despite the best intentions of all involved, PIL and law reform remains a "Trojan horse" that masks continued structural drivers of gender injustice in Uganda.

200. See Haley McEwen, "Nuclear Power: The Family in Decolonial Perspective and 'Pro-Family' Politics in Africa," *Development Southern Africa* 34(6) (2017): 738-751. Also see Oyeronke Oyewumi, "Conceptualizing Gender: The Eurocentric Foundations of Feminist Concepts and the Challenge of African Epistemologies," *Jenda: Journal of Culture and African Woman Studies* 2(1) (2002): 1–9.

9

Towards Feminist Pan-Africanism and Pan-African Feminism

If you want to go fast, go alone. If you want to go far, go together.
—African Proverb

Almost all African cultures have variants of the above saying. Others include: "Sticks in a bundle are unbreakable," "One tree is not enough to build a fence," "The teeth can only bite when they work together," "Many hands make light work," "I am because we are." The spirit of these proverbs is what informs the basic idea of Pan-Africanism and took abode among those of African descent in the diaspora who spawned the idea. Mainstream history books mention men like W.E.B. Du Bois, Marcus Garvey, George Padmore and Joseph Casely Hayford. The tendency is not only to place the spotlight on male pioneers, but also—in the typical style of Western liberalism—to delink the individuals from the social movement of which they were a part. This tendency ultimately denigrates the role of women in the Pan-African struggles. But with all the challenges standing in the way of uniting the balkanized states of Africa, the idea has endured. Today the spirit of Pan-Africanism, conflated with the concept of continentalism, seems to reside more in the

realm of conservative political rhetoric than practice. As Mashupye Maserumule remarks, "Most African leaders are stuck in the sovereignty of their nationalism."[1]

Pan-Africanism is both ideology and praxis. The historical vision for the continent's integration has persisted since the nineteenth century and is closely linked to Black consciousness, socialism and Afro-Feminism.[2] Its praxis hinges on the ability of Afro-centred activists and scholars to concretize its transformative agenda. It is also a sociopolitical worldview that seeks to restore the dignity and humanity of Africans—on the continent and elsewhere in the African diaspora—after centuries of oppression and exploitation. Primacy is given to the goal of uniting African states into a single independent federation that can garner and wield geopolitical power on the global stage, commensurate with the size and population of the continent. It is about African nationalism; it is about decolonization and decolonial reconstruction. Chigozie Nnuriam makes it clear that Pan-Africanism "is grounded on the doctrine that unity is essential to economic, social, and political progress and aims to bring and uplift people of African origin."[3] As Issa Shivji insists, Pan-Africanism is about forging an African village within the so-called global village to fight imperialism.[4] The urgency for African nationalism has never been greater than in this age of neoliberal capitalism which has cast a long shadow over the continent's progressive advancement.

The aim of this chapter is not to provide a chronological account of the development of Pan-Africanism as there is a wealth of literature on the subject. Suffice it to say that the evolution of the

1. Mashupye H. Maserumule, "Sobukwe's Pan-Africanist Dream: An Elusive Idea that Refuses to Die," *The Conversation*, (February 16, 2016). Available at: https://theconversation.com/sobukwes-pan-africanist-dream-an-elusive-idea-that-refuses-to-die-52601 [accessed August 6, 2019].

2. Note that the Afrocentric approach to Pan-Africanism traces its conceptual origins not in the response to European slavery and colonialism but much earlier – to 3200 BC, when Pharaoh Aha united the upper and lower Nile to form a united country in order to fend off foreign invasion. See Kwame Nantambu, "Pan-Africanism versus Pan-African Nationalism: An Afrocentric Analysis," *Journal of Black Studies* 28(5) (1998): 561-574.

3. Chigozie P. Nnuriam, "The Influence of Pan Africanism on Africa's International Relations, 1945-1965," *Equatorial Journal of History and International Relations* 1(1) (2018): 13-21 at p. 14.

4. Issa Shivji, *Where is Uhuru? Reflections on the Struggle for Democracy in Africa* (Cape Town: Fahamu Books, 2009), p. 196.

movement is generally divided into the pre- and post-World War II periods. The former was driven by diasporic Africans from the Americas, the Caribbean and Europe, while the latter is dominated by Africans from the continent. And while the proposals and methods of the two groupings may have differed considerably, they shared the common goal of uplifting people of African descent in their struggle for freedom from White imperialism.

The decolonization project for Africa cannot afford to have a piecemeal approach but must adopt a Pan-African course of action. Colonialism in Africa thrived (and still does) on the continent's disunity and ideological cleavages. Decolonial politics act as a constant reminder of the unfinished business of Pan-Africanism. At the 1884-85 Berlin Conference, the colonialists ensured that the continent was arbitrarily divided into numerous fragmented and impotent nations. A balkanized continent was less likely to successfully rise up against imperialism. The continent is further split into official language groupings based on colonial history, namely Anglophone (English speakers), Francophone (French speakers), Lusophone (Portuguese speakers) and Hispanophone (Spanish speakers[5]). Such colonial legacy is also responsible for inter- and intra-state tensions built on imported religions. It erects walls where there are none; even today, it is not uncommon to hear Africans located north of the Sahara and south of the Limpopo remarking, "I've never been to Africa!" All these disparities pose serious challenges to the unified Pan-African effort to liberate the continent from neocolonial oppression and exploitation. The main intent behind Pan-Africanism was to dismantle the mess created in Berlin, and to integrate the harmonized groupings into one socioeconomic and political entity on the scale of the 50 states of the United States of America (sans imperialist dimensions). Not only do the social, economic, environmental and ideological dimensions of the decolonization project require Africa to work as a bloc, but they also necessitate the continent to link up with the dispossessed masses in the global North to break the capitalist-patriarchal hegemony.[6]

5. Equatorial Guinea is the only African country that has Spanish as an official language.

6. The devastating effects of neoliberal globalization are not confined to the global South as was demonstrated by the 2011/2012 Occupy Movement whose protesters,

Unfortunately, the institutional face, the heart and the soul of the Pan-African Movement was (and still is) largely masculinist and patriarchal. Despite sharing the liberation ideals of unity, freedom and justice, the Pan-African Movement and the African feminist movements have been like two ships passing in the night, primarily following parallel paths with only tenuous points of intersection. Pan-African discourse may even be interpenetrative of the feminist one, but their practices are largely independent of each other. With this in mind, this chapter tackles the issue of Pan-Africanism along three strands. First, it offers a critique of the Pan-African Movement for paying only lip service to the key issues of African feminisms. How can we forge synergy between feminist struggles and Pan-Africanism on the continent? In the second part, the chapter discusses the limits of the Pan-Africanist ideology in African feminist movements and their implications for the decolonization/decolonial project. How can feminists on the continent work in solidarity and transnationally to achieve their goals? Next, the chapter discusses the related concept of renaissance which has emerged to replace Pan-Africanism. Some suggestions for how the Pan-African and feminist movements can work harmoniously are also offered.

Feminism in the Pan-African Movement?

It is difficult to associate Pan-Africanism with African women or even feminist issues. This is not because women made no contribution to this centuries-old movement but because, as is the case with political movements elsewhere, women are excluded from the spotlight and male-dominated narratives omit their contributions. The fact is that alongside the familiar *forefathers* named in the *his-story* of Pan-Africanism, many *foremothers* contributed to the emergence and ideology of the Pan-African Movement in significant ways. In the same way that colonialism sought to erase Africa's historiography, African women were

using social media, occupied urban spaces, mostly in the global North, against corporate power, political corruption and economic inequality. See Judy Lubin, "The 'Occupy' Movement: Emerging Protest Forms and Contested Urban Spaces," *Berkeley Planning Journal* 25(1) (2012): 184-197.

constructed as "a gender without history." Gendered racism accounts for the "disappearance" of women's roles from this important movement by Pan-Africanist men. It is thus necessary to rewrite the evolution of Pan-Africanism in order to include *her-story*, not only to bring to light the women trail-blazers who have been deliberately omitted from historical accounts of the movement, but also to surface the issues that they brought to the Pan-African table. When women are given space in mainstream historical books, they are characterized as "movement midwives rather than architects."[7] And yet, to this day African women continue to actively engage in the anti-colonial struggle and the efforts to mobilize transnationally for Pan-Africanism.

David Killingway's historical research reveals that the Pan-African Movement grew out of the African Association in Britain—the principal architect of the inaugural Pan-African conference in London in 1900.[8] Significantly, the initial stimulus for the African Association came from three young Black people living in the UK at the time: Alice Kinloch from South Africa, Thomas J. Thomson from Sierra Leone and Henry Sylvester Williams, who was of Caribbean origin. Kinloch served as the first treasurer to the African Association and, alongside other Black activists, she addressed many gatherings in Britain highlighting the plight of her "fellow natives" in her home country. A letter written by Williams confirmed that "The [African] Association is the result of Mrs. Kinloch's work in England and the feeling that as British Subjects we ought to be heard in our own affairs."[9] Kinloch herself was unable to attend the 1900 conference as she had left London and returned to South Africa. It was at that conference that the Pan-African Association was formed.

Not only were women in the vanguard of the Pan-African

7. T. Denean Sharpley-Whiting, "Femme Négritude: Jane Nardal, *La Dépêche africaine* and the Francophone New Negro," *Souls: A Critical Journal of Black Politics, Culture and Society* 2(4) (2000): 8-17 at p. 17. Also see Erik S. *McDuffie, Sojourning for Freedom: Black Women, American Communism, and the Making of Black Left Feminism* (Durham: Duke University Press, 2011). Also see the Special Issue of *Women, Gender, and Families of Color* 4(2) (2016) whose theme was "Women, Gender Politics and Pan-Africanism."

8. David Killingray, "Significant Black South Africans in Britain before 1912: Pan-African Organisations and the Emergence of South Africa's First Black Lawyers," *South African Historical Journal* 64(3) (2012): 393-417.

9. Ibid. at p. 403.

Movement, but they enriched it with significant feminist insights. Take the example of the Nardal sisters, Jeanne (Jane) and Paulette, who were among the pivotal intellectuals to develop a counter-imperialist culture in former French colonies.[10] Originally from the Caribbean island of Martinique, Jeanne and Paulette moved to Paris in the early 20th century and became writers and political commentators. They were the first two Black women to study at the renowned Paris-based Sorbonne and both their works expounded and laid the ideological groundwork for the Négritude movement and for Pan-Africanism. In Paris, Jeanne and Paulette were at the nucleus of the literary salon that met regularly to discuss conceptual aspects of Afro consciousness or Negritude with intellectuals such as the poet Léopold Sédar Senghor (later to become first president of Senegal).[11] Jennifer Boittin argues that the gender of the Nardal sisters helped to spread their influence as it "enabled them to cross boundaries which class, education and race might otherwise have upheld."[12] During the inter-war period, between 1929 and 1934, they facilitated the work of networking with other Blacks across the Atlantic in spreading the message of decolonization.[13]

Both sisters worked at the popular bimonthly journal *La Dépêche Africaine*, which Jeanne helped to establish in 1928. Through this outlet, Jeanne and Paulette published some influential essays on the topics of race consciousness, colonialism and identity. Jeanne's essay "Internationalisme Noir" (Black internationalism), for example, discussed race consciousness among the African diaspora and, according to Sharpley-Whiting, "provided an essential kernel of the philosophical foundation for the literary and cultural movement, later celebrated the world over as negritude".[14] Jeanne wrote:

10. Jennifer Anne Boittin, "In Black and White: Gender, Race Relations, and the Nardal Sisters in Interwar Paris," *French Colonial History* 6 (2005): 119-135. Also see Vivian May, "'It Is Never a Question of the Slaves': Anna Julia Cooper's Challe to History's Silences in her 1925 Sorbonne Thesis," *Callaloo* 31(3) (2008): 903-918.

11. Aimé Césaire, *Discourse on Colonialism* (trans. by Joan Pinkham) (New York: Monthly Review Press, 2000).

12. Jennifer Boittin, "In Black and White" Note 10 at p. 120.

13. T. Denean Sharpley-Whiting, "Femme Négritude," Note 7.

14. Ibid. at p. 13.

> From henceforth, there would be some interest, some originality, some pride in being Negro, to turn oneself towards Africa, the cradle of the Negro, to remember a common origin. From these new ideas, new words, have come the revealing terms: Afro-Americans, Afro-Latin. They confirm our thesis, all in casting a new meaning on the nature of this Black Internationalism.[15]

Paulette—the older of the two sisters—is also credited for several critical essays. Her unpublished work on Black humanism (*Pour un humanisme noir*) provided a sketch for Senghor's first essay on "Humanism and René Maran."[16] Paulette's essay entitled "Pantins exotiques" (exotic puppets) critiqued colonial French exotification of Black women, calling upon Blacks everywhere to resist colonial Othering. Recall that Paris was one of the metropoles where Black women's bodies were blatantly commodified as evidenced in the public 1814 naked display of the Khoi-San woman from South Africa, Saartjie (Sara) Baartman (the so-called Hottentot Venus), on its streets. Europe construed her female body not simply as biologically different from the male body, but also as dimorphically different from the White female body and sexually less desirable—the personification of racialized gender par excellence.[17] When she died the following year, Baartman's pickled sexual organs remained on exhibition in a Paris museum until 1974.[18] Hence, Paulette's essay was right on the mark and indeed ahead of the times. Other Caribbean female subversive writers of the early twentieth century included Suzanne Lacascade, Suzanne Césaire, Michele Lacrosil and Mayotte Capecia. They condemned racialism, individualism and inequality. Commenting on the historical

15. Quoted in Sharpley-Whiting, ibid. at p. 8, 14.

16. T. Denean Sharpley-Whiting, *Negritude Women* (Minneapolis: University of Minnesota Press, 2002) at p. 17.

17. See Xhercis Mendez, "Notes towards a Decolonial Feminist Methodology: Revisiting the Race/Gender Matrix," *Trans-Scripts* 5 (2005): 41-59 at pp. 48-49. Also see Sander L. Gilman, "Black Bodies, White Bodies: Toward an Iconography of Female Sexuality in Late Nineteenth-Century Art, Medicine, and Literature," *Critical Inquiry* 12(1) (1985): 204-242 at pp. 213-18.

18. See Zola Maseko, *The Life and Times of Sara Baartman: The Hottentot Venus* (Brooklyn, New York: First Run / Icarus Films, 1998), Colour, 52 minutes. It was not until 2002 that Baartman's remains were repatriated and given a decent burial by Nelson Mandela.

oblivion to which female Pan-Africanists have been relegated, Maryse Condé writes:

> Whenever women speak out, they displease, shock, or disturb. Their writings imply that before thinking of a political revolution, West Indian society needs a psychological one. What they hope for and desire conflicts with men's ambitions and dreams. Why, they ask, fight against racism in the world when it exists at home, among ourselves? There is nothing West Indian society hates more than facing the reality of color prejudice which reminds it of the days of slavery, of the time when to be Black was a curse and to possess a fair skin was regarded as a blessing.[19]

Hence, Diasporic Africans—particularly those in the Americas and the Caribbean—spawned the idea of organized Pan-Africanism and African nationalism out of their desire to return to their African roots.[20] Again, mainstream historical tomes give credit for these efforts to an all-male list of scholars such as Sylvester Williams (Trinidad), William E.B. Du Bois (US), Marcus Garvey (Jamaica), Paul Robeson (US), George Padmore (Trinidad) and C. L. R. James (Trinidad).[21] Women who were involved in these processes were relegated to oblivion in the history books. Little is known, for example, of the contribution of Sarah Breedlove (better known as Madam C. J. Walker), the African-American entrepreneur millionaire who was involved in the formation of "The International

19. Maryse Condé, "Order, Disorder, Freedom, and the West Indian Writer," *Yale French Studies* 2 (1993): 121-135 at p. 131-132.

20. Tajudeen Abdul-Raheem, "Introduction: Reclaiming Africa for Africans—Pan Africanism: 1900-1994," in Tajudeen Abdul-Raheem (ed.), *Pan-Africanism: Politics, Economy and Social Change in the Twenty-First Century* (New York: New York University Press, 1996). African nationalism was partly built through the ideology and movement of "Ethiopianism" based on Psalm 68:3 of the Bible which denoted a strong affirmation of African heritage and conviction that Africans should evangelize on the African continent. See Jehu Hanciles, "Back to Africa: White Abolitionists and Black Missionaries," in Ogbu Kalu (ed.), *African Christianity*, pp. 191-217 (Pretoria: University of Pretoria Press, 2005) at pp. 209-210.

21. See e.g., Paul Adogamhe, "PAN-AFRICANISM Revisited: Vision and Reality of African Unity and Development," *African Review of Integration* 2(2) (2008): 1-34; Hakim Adi and Marika Sherwood, *Pan-African History: Political Figures from Africa and the Diaspora since 1787* (London: Routledge, 2003); and Horace Campbell, "Pan Africanism and African Liberation," in Sydney Lemelle and Robin Kelley (eds.), *Imagining Home: Class, Culture and Nationalism in the African Diaspora*, pp. 285-307 (London and New York: Verso, 1994).

League of Darker Peoples" (ILDP).[22] Using this platform, Walker advocated for a transnational anti-imperialist movement. She later joined forces with Marcus Garvey's Universal Negro Improvement Association (UNIA), offering both political commitment and financial support towards the cause of Pan-Africanism.[23] The mouthpiece for UNIA was *The Negro World* newspaper, founded by Garvey's first wife, Amy Ashwood Garvey, a Pan-Africanist in her own right. His second wife, Amy Jaques Garvey, was a prolific journalist and UNIA activist.[24] Indeed, relative to other Pan-African organizations and despite its contradictions, UNIA proved to be a welcoming place for women's empowerment. Ford-Smith credits the organization for being the training ground for many of the Black feminists of the 1930s.[25]

Five Pan-African Congresses (PACs) were organized in Europe and the USA between 1900 and 1945. Although all were male-dominated, several African-American and Caribbean women participated in them.[26] Both Anna Jones and Anna J. Cooper, for instance, delivered papers at the 1900 London congress. Others included Fannie Williams, Ella Barrier, Mrs. Loudin and Ms. Adams.[27] Addie Hunton and Ida Gibbs were also active delegates at the 1919 Paris congress. The third congress in 1923, which was held partly in London and partly in Lisbon, was attended by the feminist Ghanaian journalist/writer Mabel Dove Danquah, who went on to be the first elected woman in an African legislative assembly.[28] The

22. Clarence Contee, "Du Bois, the NAACP, and the Pan-African Congress of 1919," *Journal of Negro History* 57(1) (1972): 13-28 at p. 18.

23. Keisha Blain, "Madam C. J. Walker Wasn't Just a Positive Force for African Americans: She also Pioneered Global Black Activism," *Timeline* (February 8, 2017), available at: https://timeline.com/madame-cj-walker-history-50d6d7090076 [accessed August 16, 2019].

24. Rhoda Reddock, "The First Mrs. Garvey: Pan-Africanism and Feminism in the Early 20th Century British Colonial Caribbean, *Feminist Africa* 19 (2014): 58-77.

25. Honor Ford-Smith, "Unruly Virtues of the Spectacular: Performing Engendered Nationalisms in the UNIA in Jamaica," *Interventions: International Journal of Postcolonial Studies* 6(1) (2004): 18–44.

26. See Marika Sherwood, *Origins of Pan-Africanism: Henry Sylvester Williams, Africa, and the African Diaspora*, (London, Routledge, 2011).

27. Tony Martin, *The Pan-African Connection: From Slavery to Garvey and Beyond*, (Dover, MA.: Majority Press, 1984).

28. Carole Boyce Davis, "Pan-Africanism, Transnational Black Feminism and the Limits of Culturalist Analyses in Africa Gender Discourses," *Feminist Africa* 19 (2014): 78-93. Also see Margaret Busby, "Mabel Dove-Danquah," in Margaret Busby (ed.), *Daughters of*

1923 PAC clearly exhibited the masculinist logic behind most PAC demands of the time: "In fine, we ask in all the world, that Black folk be treated as men. We can see no other road to Peace and Progress."[29]

Sierra Leonean feminist and UNIA member Adelaide Casely Hayford helped organize the fourth Pan-African Congress held in New York in 1927.[30] In fact, it was the "Women's International Circle for Peace and Foreign Relations" that convened that congress.[31] Many more African women from the US and the Caribbean contributed to the international struggles against imperialism and colonialism—Jessie Faucet, Mary McLeod Bethune, Dorothy Hunton and others. Claudia Jones, for instance, was a communist revolutionary who articulated the concept of intersectionality in the early twentieth century before Kimberlé Crenshaw developed its critical lexicon.[32] Her approach to eliminating racism was fully integrated with anti-capitalist, anti-patriarchal and anti-imperialist ideology. Together with Amy Ashwood, Jones was a member of the International African Friends of Abyssinia (IAFA) which was set up in 1935 to protest Mussolini's aggression against Ethiopia.[33] In her influential 1949 essay "We Seek Full Equality for Women," Jones tackled the intersecting oppression of race, class and gender.[34]

But issues of class and gender were not fodder for discussion

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Africa: An International Anthology of Words and Writings by Women of African Descent (London: Vintage, 1993), p. 223.

29. Henry Louis Gates Jr. (ed.), *The World and Africa: W.E.B. Du Bois* (Oxford: Oxford University Press, 2007) at p. 153.

30. Barbara Bair, "Pan-Africanism as Process: Adelaide Casely Hayford, Garveyism and the Cultural Roots of Nationalism," in Sydney Lemelle and Robin Kelley (eds.), *Imagining Home: Class, Culture and Nationalism in the African Diaspora*, pp. 121-144 (London and New York: Verso, 1994).

31. Chigozie P. Nnuriam, "The Influence of Pan Africanism" Note 3 at p. 15.

32. Ajamu Nangwaya, "Claudia Jones: Unknown Pan-Africanist, Feminist and Communist," *Telesur* (February 10, 2016), available at: https://www.telesurenglish.net/opinion/Claudia-Jones-Unknown-Pan-Africanist-Feminist-and-Communist--20160210-0020.html [accessed August 17, 2019]. For a detailed history of intersectional thought see Vivian May, *Pursuing Intersectionality, Unsettling Dominant Imaginaries,* (New York: Routledge, 2015).

33. Carole Boyce Davis, "Pan-Africanism," Note 28. For a critical discussion of the Italo-Ethiopian war, see Adom Getachew, *Worldmaking after Empire, The Rise and Fall of Self-Determination* (Princeton: Princeton University Press, 2019) at pp. 62-67.

34. First published in the *Daily Worker* September 4, 1949. Excerpted from Carole Boyce Davies (ed.), *Claudia Jones: Beyond Containment* (Banbury, UK: Ayebia Clarke Publishing Ltd., 2011).

in the mainstream Pan-African Movement. Having imbibed the Eurocentric ideology of the "Dark Continent" and "barbaric" Africa, the general sentiment held by the forefathers which informed these first meetings was to demand for diasporic Africans to participate in the emancipation and development of Africa. As Tunde Adeleke observed:

> Having been westernized themselves, they embraced the Europeans as partners with whom they shared cultural attributes…. not only did Black American nationalists embrace Eurocentrism, they also argued forcefully for the occupation of Africa, and the subvention of her independence. They appealed to Europeans for acceptance and cooperation as partners in the task of civilizing "primitive Africa." They were more concerned with securing a place for themselves in the imperial schemes than with developing and strengthening the Pan-African nexus, a commitment they initially advocated.[35]

What many diasporic Pan-Africanists did not fully appreciate was that the imperialist racialist ideology did not differentiate between Blacks on the continent and those in the diaspora.

The representation of Africans from the continent in the first four congresses was only token and it was not until the fifth congress held in October 1945 in Manchester, UK, that their presence was significant.[36] This was considered the most important of all congresses. Again, African women were conspicuous by their absence, or at least by an absence of any record of their participation and contribution. This means that women's concerns and interests were also missing from the agenda; not a single female delegate from the continent presented a paper in Manchester.[37] Among the delegates from the continent were notables like Kwame Nkrumah (Ghana), Hastings Kamuzu Banda

35. Tunde Adeleke, "Black Americans and Africa: A Critique of the Pan-African and Identity Paradigms," *International Journal of African Historical Studies* 31(3) (1998): 505-536 at p. 519.

36. Alexandre Mboukou, "The Pan-African Movement, 1900-1945: A Study in Leadership Conflicts Among the Disciples of Pan-Africanism," *Journal of Black Studies* 1(3) (1983): 275-288.

37. However, two Caribbean women—Amy Ashwood Garvey and Alma La Badie—presented papers at this congress. The focus of their papers was mostly regarding women in the West Indies.

(Malawi), Obafemi Awolowo (Nigeria), Jaja Wachuku (Nigeria), Jomo Kenyatta (Kenya) and Wallace Johnson (Sierra Leone)—all of whom went on to climb to the helm of post-colonial governance in their countries. All subsequent congresses have been held on the continent—Dar es Salaam (1974), Kampala (1994) and Accra (2015).[38]

Manchester was indeed a turning point in the Pan-African Movement and it marked the watershed of Africa's decolonization. While previous conferences focused on the global legacies of slavery, calling for reforms in the colonial administrative systems and demanding that Afro-Americans and Afro-Caribbeans take over the leadership reins in the colonies, the 1945 congress insisted on radical decolonization. Needless to say, the earlier conferences planted the seeds of a new political science that concerned itself with the possibilities and principles of African self-government.[39] They also planted an embryonic nationalism which inspired young Africans who were students in the UK at the time, many with socialist leanings. Kwame Nkrumah and Jomo Kenyatta, for example, were more outspoken in denouncing colonialism than W.E.B. Du Bois and his ilk. They were impatient with the patronizing, elitist attitudes exhibited by their brothers from the Americas and the Caribbean and, together, they founded the Pan-African Federation in 1946. Some accused the Negritude movement of being composed of "mimic men" whose worldview was no different from the Western postulates about Africa.[40] Ironically, those same African men who detested Du Bois' Pan-Africanism were quite content to live with excluding, minimizing and patronizing African women.

The spirit of Pan-Africanism was kept burning post-Manchester

38. The meeting that was held in Johannesburg, South Africa in February 2014 claimed to be the 8th PAC. However, it was disregarded by many Pan-African organizations and activists because of its non-inclusive organizing methods and its exclusion of north Africa from the meeting. See Ikaweba Buting, "8th Pan-African Congress: The Congress is Not the Movement," *Pambazuka News*, (May 06, 2015), available at: https://www.pambazuka.org/pan-africanism/8th-pan-african-congress-congress-not-movement [accessed September 3, 2019].

39. See Hakim Adi and Marika Sherwood, *Pan-African History: Political Figures from Africa and the Diaspora Since 1787* (London: Routledge, 2003). Also see Chigozie P. Nnuriam, "The Influence of Pan Africanism" Note 3.

40. See Maryse Condé, "The Stealers of Fire: The French-Speaking Writers of the Caribbean and their Strategies of Liberation," *Journal of Black Studies* 35(2) (2004): 154-164 at p.156.

through the auspices of the All-African People's Conference (AAPC). Its Accra-based secretariat organized three huge, albeit male-dominated, conferences in 1958, 1960 and 1961, bringing together political leaders and activists from across the continent.[41] The main agenda item for all three conferences was to accelerate the decolonization process by granting formal independence to all African states. In 1960, the decolonization process was given a boost when the UN was pressured into passing Resolution 1514 titled, "Declaration on the Granting of Independence to Colonial Countries and Peoples."[42] The continental meetings also discussed ways that the continent could break itself from neocolonialism. As Nnuriam correctly pointed out, the ideology of Pan-Africanism informed and shaped all these political activities.[43] So, issues of race and class featured prominently at the post-Manchester meetings but their resolutions remained silent on sexism and other –isms that adversely affected millions of marginalized social groups on the continent. Quite literally, "Black Brotherhood" remained the mantra of the Pan-African Movement. Men of African descent ignored and indeed, were complicit in sexism through the "universalization" of Black men's experiences. Indeed, the Pan-African Movement to-date is essentially robed in patriarchal garb busy espousing hetero-patriarchal values.[44]

The Pan-African Movement needs to politically and philosophically infuse intersectionality into its revived agenda. Such a methodology, as Vivian May tells us, would provide the requisite "tools for questioning default explanations about status quo reality and for probing the everyday logics that sustain and

41. In December 2018, to commemorate 60 years since the 1958 AAPC, the Institute of African Studies at the University of Ghana organized a conference under the theme "The Unfinished Business of Liberation and Transformation." The 2018 conference was a far cry from its 1958 predecessor. Not only were women heavily involved in organizing the conference (with Prof. Dzodzi Tsikata chairing the planning committee), but the programme lineup also featured a healthy dose of gender-related topics relevant to Pan-Africanism.

42. For a detailed and critical discussion of anticolonial politics at the United Nations, see Adom Getachew, *World making after Empire,* Note 33.

43. Chigozie P. Nnuriam, "The Influence of Pan Africanism," Note 3, at p. 13.

44. Jamaican scholar Rhoda Reddock argues that, "despite the patriarchal character of early pan-Africanist organizations, they heightened women's consciousness of social justice and provided space for the acquisition of organizational skills which were crucial for an emergent feminist discourse and praxis." See Rhoda Reddock, "The First Mrs. Garvey" Note 24 at p.72.

rationalize inequality." She adds that "As a critical orientation, intersectionality is forward-looking and historically focused. It asks that we imagine future possibilities and reconsider omissions, past and present, from a 'matrix' mindset: it also helps to expose historical silences and to understand oppression and privilege as lived experiences and processes situated in and shaped by material, political and social conditions."[45] There have been considerable attempts to expand the contours of African historiography to include female nationalists.[46] Apart from the names already mentioned here, there were many other African female liberators and Pan-Africanists that mainstream history books have omitted. These include Bibi Titi Mohamed, Funmilayo Ransome-Kuti, Constance Cummings-Jones, Winnie Madizekela-Mandela, Wangari Maathai, Thenjiwe Mtintso, Djamila Bouhired, Huda Sha'arawi, Charlotte Maxeke, Albertina Sisulu and many others.

Aged 39 in 1913, Maxeke—the first female Black graduate in Apartheid South Africa—led her fellow women to protest against the racist policy that required non-Whites to carry identity passes.[47] Five years later, she went on to form the Bantu Women's League, which continued to fight for freedom against exploitation and oppression.[48] Huda Sha'arawi was a powerful feminist strategist who led veiled women's demonstrations in Egypt's 1919 revolution that partially removed the British colonialists in 1922. Through organizations such as the Wafdist Women's Central Committee (WWCC) and the Egyptian Feminist Union (EFU), Sha'arawi

45. Vivian May, *Pursuing Intersectionality*, Note 32, at p. 6.

46. See e.g., Hakima Abbas and Amina Mama, "Feminism and Pan-Africanism" *Feminist Africa* 19 (2014): 1-6; Cora Ann Presley, "Kikuyu Women in the 'Mau Mau' Rebellion," in Gary Okihiro (ed.), *Resistance: Studies in African, Caribbean and Afro-American History* (Amherst: University of Massachusetts, 1986); Bev Orton, *Women, Activism and Apartheid South Africa: Using Play Texts to Document the Herstory of South Africa* (Bingley: Emerald Publishing Ltd, 2018); Katharine McGregor, "Opposing Colonialism: the Women's International Democratic Federation and Decolonisation Struggles in Vietnam and Algeria 1945–1965," *Women's History Review* 25(6) (2016): 925-944; and African Feminist Forum, "African Feminist Ancestors," available at:http://www.africanfeministforum.com/african-feminists/african-feminist-ancestors/ [accessed September 4, 2019].

47. Catherine Lee, "World-Changing Women: Charlotte Maxeke," Open University (February 24, 2015), available at: https://www.open.edu/openlearn/history-the-arts/world-changing-women-charlotte-maxeke-0?in_menu=313129# [accessed September 3, 2019].

48. Ibid.

championed radical nationalist and feminist calls for her country's liberation.[49] Tanzania's Bibi Titi was a household name in that country's liberation movement and was well-known for her political mobilizing skills. She worked closely with Julius Nyerere in the Tanganyika African National Union (TANU) and tutored him in how to speak the colloquial Swahili that appealed to *wananchi*.[50] In 1997, Cheryl Johnson-Odim and Nina Emma unveiled the biography of Nigeria's formidable Funmilayo Ransome-Kuti—the woman who fought for suffrage and equal rights in the post-World War II period.[51] She also played a very prominent role in the anti-colonial struggles of her country, so much so that the British colonialists denied her a passport in 1956 to curtail her efforts to "influence women with communist ideas and policies."[52]

The story of Algeria's resistance against the French would be incomplete without the brave exploits and hardships endured by Djamila Bouhired who was central to the success of the Battle of Algiers in the 1950s war of Algerian decolonization.[53] Kenya's Wangari Maathai was the first Professor of African Renaissance Studies and the founder of the *International Journal of African Renaissance Studies*.[54] The intellectualism of this ecofeminist was fiercely channeled into preserving nature and challenging the neocolonial exploitation of the earth—pursuits for which she received the Nobel Prize in 2004.[55] And Africa's liberation history is

49. Nabila Ramdani, "Women in the 1919 Egyptian Revolution: From Feminist Awakening to Nationalist Political Activism," *Journal of International Women's Studies* 14(2) (2013): 39-52.

50. Susan Geiger, "Tanganyikan Nationalism as 'Women's Work': Life Histories, Collective Biography and Changing Historiography," *Journal of African History* 37(3) (1996): 465-478 at p. 471.

51. Cheryl Johnson-Odim and Nina Emma, *For Women and the Nation: Funmilayo Ransome-Kuti of Nigeria* (Champaign, IL: University of Illinois Press, 1997).

52. See Bonny Ibhawoh, *Human Rights in Africa* (Cambridge: Cambridge University Press, 2018) at p. 158.

53. Danièle Djamila Amrane Minne, "Women at War," (Trans. Alistair Clarke), *Interventions* 9(3) (2007): 340-349.

54. Shadrack Gutto, "Re-Theorising and Re-Conceptualising Land, Sovereignty, Socio-Economic Rights and Responsibility in the Context of Pan-Africanism and African Renaissance in the 21st Century," *International Journal of African Renaissance Studies - Multi-, Inter- and Transdisciplinarity* 9(1) (2014): 5-15 at p. 11.

55. See Gail M. Presbey, "Women's empowerment: the insights of Wangari Maathai," *Journal of Global Ethics* 9(3) (2013): 277-292; and Marc Michaelson, "Wangari Maathai and Kenya's Green Belt Movement: Exploring the Evolution and Potentialities of Consensus Movement Mobilization," *Social Problems* 41(4) (1994): 540-561.

usually warped when it comes to the South African giant, Winnie Mandela. Her heroism, bravery and legacy is undermined, even eroded against that of her iconic husband, Nelson Mandela. Mainstream narratives prefer to dwell on the inevitable mistakes that she made under the severely oppressive and complex conditions of apartheid.[56] Political narratives about Winnie Mandela are usually framed in gendered and vilifying terms. Shireen Hassim argues that narratives that indict Winnie are misleading as they contain her "within a narrative of a fallen woman rather than understanding her within a political landscape that both shaped her and that she shaped by her words and actions."[57]

Undoubtedly, women have been at the heart of political struggles on the continent despite history's glossing over their stellar legacies. The tidy narratives that dominate male political legacies work to deliberately gloss over the messy patches. African women did not just look on as their male counterparts elbowed them out of mainstream spaces where the politics of their continent was being discussed. Frustrated with the lip service that men in the liberation movements paid to their plight, women established the Pan-African Women's Organization (PAWO) in 1962.[58] Under the leadership of Guinean politician Jeanne Martin Cissé, women in the African independent movements organized an All African Women's Conference in Tanganyika.[59] Hakima Abbas and Amina Mama captured the levels of frustration that African women felt at the time: "the fact that class oppression was often given primacy in the false 'hierarchy of oppressions' points to a level of expediency that may be unsurprising given that nationalist movements predate contemporary understanding of the manner in which multiple

56. See e.g., Helena Pohlandt-McCormick, "Controlling Woman: Winnie Mandela and the 1976 Soweto Uprising," *International Journal of African Historical Studies* 33(3) (2000): 585-614; and Mary Beard, *Women and Power: A Manifesto* (New York: Liveright, 2017).

57. Shireen Hassim, "Not Just Nelson's Wife: Winnie Madikizela-Mandela, Violence and Radicalism in South Africa," *Journal of Southern African Studies* 44(5) (2018): 895-912 at p. 907.

58. Iris Berger, "African Women's Movements in the Twentieth Century: A Hidden History," *African Studies Review* 57(3) (2014): 1-19.

59. See Johanna Koomen, "Worldly Encounters: The Politics of Global Governance and Women's Human Rights in East Africa," PhD Dissertation (University of Minnesota, 2009) at pp. 7-8. Available at: https://conservancy.umn.edu/bitstream/handle/11299/53667/1/Koomen_umn_0130E_10472.pdf [accessed August 18, 2019].

vectors of oppression interact, to facilitate colonial divide-and-rule."[60] PAWO worked hard to build cross-nation solidarity among African women. For example, during the anti-apartheid struggle, it connected women in the African National Congress (ANC) to influential women such as Nigeria's Ransome-Kuti.[61]

By the mid-1960s, when most African states had gained formal independence, the Pan-African Movement had run out of steam. Its political agenda shifted to the Organization of African Unity (OAU) formed in 1963 by African heads of state. The vision of its proponents was to forge a United States of Africa (USAf). But the mapping of the means and route to transform the continent into USAf had always been fraught with contentions, tensions and contradictions. Nkrumah's vision of an American-like federation as a solution to Africa's neocolonial predicament was problematic. Ethiopian political theorist Adom Getachew argues that American federalism is embedded in imperialism which was key to its success: "If American federation could become a model for anticolonial nationalists after its imperial dimensions were elided, framing the postcolonial predicament as an external problem of reconciling de jure and de facto independence overshadowed the internal conditions of ethnic, racial, and religious pluralism that characterized twentieth-century postcolonial states."[62] She further illustrates this argument by pointing out the ironic situation whereby Nkrumah explicitly rejected federalism for his own country but wished to pursue supranational federation at the continental level. Whereas it is imperative that Africa works as a bloc in the social, economic, environmental and ideological dimensions of the decolonization project, the continent cannot afford to gloss over differences (based on race, ethnicity, gender, religion, etc.) and any potential majoritarian tyranny that could emerge within a USAf framework.

In fact, the OAU itself was a product of a compromise between conflicting blocs which poisoned the very spirit of Pan-Africanism.

60. Hakima Abbas and Amina Mama, "Feminism and Pan-Africanism," Note 46 at pp. 4-5.

61. Emma Lundin, "'Now is the Time!': The Importance of International Spaces for Women's Activism within the ANC, 1960-1976," *Journal of Southern African Studies* 45(2) (2019): 323-340.

62. Adom Getachew, *Worldmaking after Empire,* Note 33 at p. 119.

On the one hand, there had been the so-called Casablanca bloc led by Kwame Nkrumah which advocated for the immediate formation of the USAf.[63] Under USAf, countries would immediately surrender their national sovereignty for a Pan-African continental sovereignty. On the other hand, the more moderate Monrovia group which clustered around Léopold Senghor preferred a gradualist, step-by-step approach to African unity.[64] These splinters threatened to fragment the continent into warring regions. Hence, from the start, the OAU was forced to tread the thin line and delicate ground between the pioneering history of radical and reformist influences. It has caused massive moral and ideological indigestion for the organization. Nevertheless, the formation of the OAU should be considered as one small step forward in the quest for Pan-Africanism.

However, hardly a year into the formation of the OAU, it took ten steps backwards at its first ordinary summit held in Cairo. Ghana tabled a proposal for the establishment of a union government of Africa.[65] Not only did the summit refer the proposal to the specialized commissions of the organization for further scrutiny (read "kill it") but it also passed a resolution declaring "all Member States pledge themselves to respect the borders existing on their achievement of national independence."[66] There is little doubt that the heads of states, whether Casablanca- or Monrovia-leaning, were conflicted by their own internal contradictions of state power,

63. Launched in January 1961, this bloc included Ghana, Mali, Guinea, the United Arab Republic and the Algerian Provisional Government. See *Kwame Nkrumah*, *Neo-Colonialism, The Last Stage of Imperialism*, (London: Thomas Nelson & Sons, Ltd., *1965*) at p.30.

64. The Monrovia group was launched in May 1961 and was supported by the following countries: Senegal, Nigeria, Sierra Leone, Liberia, Togo, Ivory Coast, Cameroon, Dahomey (present-day Benin), Malagasy Republic (present-day Madagascar), Chad, Upper Volta (present-day Burkina Faso), Niger, People's Republic of Congo, Gabon, Central African Republic, Ethiopia, Somalia, and Tunisia. The majority of these countries belonged to *L'Afrique Noire*, while the two Francophone countries that put up the stiffest resistance against French assimilation policies, viz., Morocco and Guinea, stood in the opposing camp.

65. Zdenek Červenka, *The Unfinished Quest for Unity: Africa and the OAU* (London: Julian Friedman Publishers, 1977).

66. See OAU Secretariat, "Resolutions adopted by the first ordinary session of the assembly of heads of state and government held in Cairo, UAR, from 17 to 21 July, 1964" AHG/Res. 16(I). Available at: https://au.int/sites/default/files/decisions/9514-1964_ahg_res_1-24_i_e.pdf. Note that member states had enshrined the Non-Interference Principle in the OAU Charter itself.

privilege and democratic legitimacy in the era of neocolonialism. Many of the "founding fathers" had become prisoners of the red-carpet trappings and the siren fanfare associated with their presidential office. President Nyerere's story about a colleague in the aftermath of the second OAU summit held in Accra in October 1965 is telling:

> Once you multiply national anthems, national flags and national passports, seats of the United Nations, and individuals entitled to a 21-gun salute, not to speak of a host of ministers, prime ministers and envoys, you would have a whole army of powerful people with vested interests in keeping Africa balkanized. That was what Nkrumah encountered in 1965. After the failure to establish the union government at the Accra Summit, I heard one head of state express with relief that he was happy to be returning home to his country still head of state. To this day, I cannot tell whether he was serious or joking. But he may well have been serious, because Kwame Nkrumah was very serious and the fear of a number of us to lose our precious status was quite palpable.[67]

Undoubtedly, the dampening effect of the OAU compromise reduced the spirit of Pan-Africanism to mere political rhetoric, with a sole focus on consolidation and not unity. Leaders kept Africa "divided so that they can remain big fishes in the tiny ponds bequeathed to them by colonialism."[68] It was becoming increasingly clear that the OAU "Boys' Club," dubbed the "Dictators' Club," was ever going to deliver pacification, let alone unification of the continent. In an attempt to rejuvenate, streamline and rationalize the OAU and African economic communities for the twenty-first century, it was disbanded in 2002 and rebirthed as the African Union (AU).[69]

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67. President Julius Nyerere's speech delivered in Accra on the occasion of Ghana's 40th independence anniversary celebrations, March 6, 1997. Reproduced in *New African*, "Nyerere: 'Without Unity, there is no future for Africa'," (May 3, 2013). Available at: https://newafricanmagazine.com/3723/ [accessed August 10, 2019].

68. Tajudeen Abdul-Raheem, "Africa without Borders," *Speaking Truth to Power: Selected Pan-African Postcards* (Nairobi: Pambazuka Press, 2010), pp. 93-96 at p. 94.

69. Fongot Kini-Yen Kinni, *Pan-Africanism: Political Philosophy and Socio-Economic Anthropology for African Liberation and Governance*, Vol. 3 (Mankon, Cameroon: Langaa Research & Publishing, 2015) at pp. 53-56.

The OAU may have acquired a new lease on life but its old spirit of state consolidation and presidential dominance was carried over to the AU, which on paper supports regional cooperation and seems to have shelved the idea of federal unity. The Abuja Treaty of 1991 which recommended the creation of the African Union, the Pan-African Parliament (PAP) and the African Economic Community (AEC) was also meant to be part of the gradual approach towards unity.[70] The regional economic communities[71] are all perceived as an incremental step by those that subscribe to the gradualist Senghor/Nyerere school of thought.[72] As a matter of fact this is simply regional balkanization and even within those blocs there are tensions which defeat the goals of free movement, political federation and economic growth.[73] Moreover, the close engagement between the AU and the European Union (EU)—particularly in the areas of security, governance and trade—do not sit well with many Pan-Africanists who view the neoliberal principles that govern that alliance as untenable for the interests of the continent.[74] Many question the AU-EU asymmetrical relationship where the AU views

70. See Ibrahim Gambari, "The Political Implications of the African Economic Community," in M. A. Ajomo and Omobolaji Adewale (eds.), *African Economic Community Treaty: Issues, Problems and Prospects*, pp. 60-76 (Lagos: Nigerian Institute of Advanced Legal Studies, 1993).

71. These include, inter alia, the Southern African Development Community (SADC), the East African Community (EAC), the Economic Community of West African States (ECOWAS), the Common Market for Eastern and Southern Africa (COMESA), the Economic Community of Central African States (ECCAS) and the Arab Maghreb Union (AMU).

72. Some scholars argue that the gradualist approach is better described as the realist approach. E.g., see Issa Shivji, *Pan-Africanism or Pragmatism? Lessons of the Tanganyika-Zanzibar Union* (Dar es Salaam: Mkukina Nyota Publishers, 2008); Also see Richard Oppong, "The African Union, the African Economic Community and Africa's Regional Economic Communities: Untangling a Complex Web," *African Journal of International and Comparative Law* 18(1) (2010): 92-103.

73. See Ioana Lungu, *Neocolonialism or Balanced Partnership? The State of Agricultural Trade Between the EU and Africa*, (Vienna: ÖGfE Policy Brief 15 of 2018). Available at: https://irihs.ihs.ac.at/id/eprint/4715/1/OEGfE_Policy_Brief-2018.15.pdf [accessed Jan 30, 2020].

74. See Mark Langan, "Budget Support and Africa–European Union Relations: Free Market Reform and Neocolonialism?" *European Journal of International Relations* 21 (2015): 101–21.

the EU as both model and mentor for its integration strategy.[75] Quite obviously, little positive can emerge from such a conundrum.

Regional economic cooperation is narrow and limited in its scope as state economies are still based on colonial-era economic policies which do not promote integration. Gambari correctly observed that the shield of non-interference was kept intact: "The AEC Treaty is suffused with provisions which cover matters and subjects hitherto regarded as remaining only within the competence of each sovereign Member State."[76] So, what the AU basically did was to institutionalize and freeze the ideals of Pan-Africanism.[77] But today, unionist leaders under the Nkrumah school of thought are few and far between; Libya's late Muammar Gaddafi, for example, advocated for a federated structure of USAf, albeit mostly driven by personal ambitions to become its first president.[78]

In contrast to its predecessor the OAU which was largely silent on gender issues, the AU committed to the prioritization of gender equality. Thus, Article 4(1) of the Constitutive Act of the African Union makes a commitment to "expand and promote the gender parity principle" enunciated therein. As a concrete expression of this pledge, it has adopted various structures and designed a number of policies.[79] Hence, in 2001, the AU appointed a Special Rapporteur on Women's Rights in Africa. More significantly, it adopted the Protocol to the African Charter on Human and People's

75. See e.g., Adekeye Adebajo and Kaye Whiteman (eds.), *The EU and Africa: From Eurafrique to Afro-Europa*, pp. 83-104 (Johannesburg: Wits University Press, 2012); and Jack Mangala (ed.), *Africa and the European Union: A Strategic Partnership* (New York: Palgrave, 2013).

76. Ibrahim Gambari, "The Political Implications," Note 70 at p. 64.

77. See Tim Murithi, "Institutionalising Pan-Africanism Transforming African Union Values and Principles into Policy and Practice," Research Paper, Institute for Security Studies (ISS) (June 4, 2007), available at: https://issafrica.org/research/papers/institutionalising-pan-africanism-transforming-african-union-values-and-principles-into-policy-and-practice [accessed August 22, 2019].

78. See Paul Adogamhe, "Pan-Africanism Revisited: Vision and Reality of African Unity and Development," *African Review of Integration* 2(2) (2008): 1-34.

79. These include, inter alia: the Constitutive Act of the African Union CAB/LEG/23.15 (26 May 2001); the New Partnership for Africa's Development (NEPAD) (2001), para 67; the African Union Solemn Declaration on Gender Equality in Africa, Para 5, (2004); the AU Plan of Action on the Family, 2005; the Continental Policy Framework and Plan of Action on Sexual and Reproductive Health and Rights, 2005; the EU-Africa Plan of Action to Combat Trafficking in Human Beings, especially Women and Children, 2007; the Maputo Plan of Action for the Operationalisation of the Continental Policy Framework for Sexual and Reproductive Health and Rights, 2007-2010; and the AU Gender Policy, 2009.

Rights on the Rights of Women in Africa (Maputo Protocol) in 2003. It also committed to the mainstreaming of gender in all AU programmes and activities, declaring 2010 to 2020 as the "African Decade for Women.[80]

Despite this flurry of initiatives embarked upon by the AU to improve the status of women, little has changed on the ground; not only do women remain grossly underrepresented within the AU primary policy-making structures (i.e., the Assembly of Heads of States & Government, the Executive Council and the Peace & Security Council), but patriarchy remains highly institutionalized in its practices and systems.[81] Significantly, the AU has not invested in addressing the broader structural drivers of gender inequities or shifting social norms that underpin gender power relations. While the AU's Agenda 2063 ("The Africa We Want") promises to move Africa towards structural transformation that empowers African people, particularly women and youth, it is fraught with gaps and contradictions.[82] Bob Munyati points to the glaring omission, for example, of the interests and concerns of sexual minorities from Agenda 2063.[83] One wonders who exactly is included in the "We" of the Agenda 2063 slogan.[84]

At the sixth Pan-African Congress held in Dar es Salaam in 1974, women's issues continued to be marginalized, only appearing as tokenistic resolutions whereby the congress pledged, in general terms, "total support to the political struggles for equality undertaken by Black women" and promised "to tackle the problems

80. See Art 3(2)(z)(cc) Statutes of the Commission of the African Union [ASS/AU/2(I)-d]. The Decade was declared at the 12th ordinary session of the Assembly of Heads of State and Government of the AU and formally launched on October 15, 2010.

81. See Karen Stefiszyn, "The African Union: Challenges and Opportunities for Women," *African Human Rights Law Journal* 5(2) (2005): 358-386; Rachel Rebouche, "Labour, Land, and Women's Rights in Africa: Challenges for the New Protocol on the Rights of Women," *Harvard Human Rights Journal* 19(10) (2006): 235-256; and Dejo Olowu, "Mainstreaming Women, Equating Men: Charting an Inclusionary Approach to Transformative Development in the African Decade for Women," *Law, Democracy and Development* 15 (2011): 160-181.

82. See African Union, *Agenda 2063: The Africa We Want* (Addis Ababa: African Union Commission, 2014).

83. Bob Mwiinga Munyati, "African Women's Sexual and Reproductive Health and Rights: The Revised Maputo Plan of Action Pushes for Upscaled Delivery," *Agenda* 32(1) (2018): 36-45 at p. 43.

84. See Job S. Amupanda, "Who is in the 'We'? Interrogating the African Union's Agenda 2063 and Youth Political Participation," *International Journal of African Renaissance Studies* 13(1) (2018): 56-76.

of the oppression of women thoroughly and profoundly."[85] The discourse of the OAU's bureaucratic "talking shop" largely continued to ignore the plight of women. Women's rights did not factor anywhere in the Cold War politics that played out at the continental level or in the Anglophone-Francophone alliances that often divided OAU proceedings. Indeed, without the push and pull from national, regional and international women's movements, it is unlikely that the progress in the gender normative framework of the AU would have been realized.[86] While the regional normative framework is essential, it must be noted that most concrete achievements in terms of equity and gender inclusion seen in various African states of recent have been registered "in spite of" not "because of" the AU.[87] The Pan-African Women's Organization (PAWO), which was run by state officials, did not pose a serious challenge to patriarchal power. Indeed, as an arm of the AU—comprising mostly first ladies, female cabinet ministers and other high-ranking officials—PAWO has been largely impotent beyond organizing annual congresses.[88]

By 1994, when the seventh congress took place in Uganda, African women were much more organized. They held a pre-congress meeting to discuss strategies of how to integrate their issues into the congress agenda.[89] The result was a total of seven workshops at the main congress that dealt in-depth with gender-specific Pan-

85. See Pan African Congress, *Resolutions and Selected Speeches from the Sixth Pan African Congress* (Dar es Salaam, Tanzania Publishing House, 1976) at p. 197.

86. E.g., the AU Directorate of Women, Gender and Development (WGDD), Gender Equality and Women's Empowerment (GEWE) framework, Africa's Women's Decade (2010-2020) and the AU Strategy for Gender Equality and Women's Empowerment (2018-2028). For details of this strategy see: https://au.int/sites/default/files/documents/36195-doc-au_strategy_for_gender_equality_womens_empowerment_2018-2028_report.pdf [accessed September 9, 2019].

87. African women's civil society groups have been at the forefront of most of these achievements. See e.g., Aili Mari Tripp, Isabel Casimiro, Joy Kwesiga, and Alice Mungwa, *African Women's Movements: Changing Political Landscapes* (Cambridge: Cambridge University Press, 2008); Patricia McFadden, "Becoming Postcolonial: African Women Changing the Meaning of Citizenship," *Meridians* 6(1) (2005): 1-18; and Gemma Burgess, "A Hidden History: Women's Activism in Ethiopia," *Journal of International Women's Studies* 14(3) (2013): 96-107.

88. PAWO maintained observer status at the OAU, but at its 28th summit held in January 2017, the African Union accorded it Special Agency status. It is now recognized within government structures of AU member states.

89. Zaline Makini Roy-Campbell, "Pan-African Women Organising for the Future: The Formation of the Pan-African Women's Liberation Organisation and Beyond," *African Journal of Political Science* 1(1) (1996): 45-57.

African issues that were pressing African women.[90] Interestingly, at the vanguard of breaking through the traditionally masculinist PAC agenda was the first lady of Uganda, Janet Museveni, and other female politicians, who are not the most compelling figures in the pursuit of feminist issues. Grassroots women were invited from across the continent to share their experiences. A resolution was passed to build a Pan-African Women's Liberation Organization (PAWLO).[91] Unlike PAWO, membership of the newly-launched PAWLO extended to African women in the diaspora.[92] The idea was to build local chapters in individual African states to fully engender the Pan-African processes.[93] However, the fact that PAWLO was a top-down organization, resembling its distant cousin PAWO, made it flawed from the outset.

As we have already seen, the ideal of Pan-Africanism cannot be achieved within the institutionalized coloniality of state politics. Tajudeen Abdul-Raheem, the General-Secretary of the Pan-African secretariat, who led the organizing of the seventh congress, reported the continued guarded attitudes that African governments had towards Pan-Africanism. The congress had to be postponed from December 1993 to April 1994 because, inter alia, some governments had shunned participation because of the involvement of opposition political activists.[94] Indeed, ultimately the majority of government officials stayed away from this important congress, signaling that nothing had changed from the 1965 OAU summit held in Accra.[95] Nevertheless, the Seventh PAC, which represented a robust revival of the Pan-African spirit on the continent, historically remains the most vibrant in accommodating the women's agenda. Congress Resolution No. 8 on "Women in Pan-Africanism" was quite comprehensive, laying a firm ground for

90. Ibid.

91. Ibid. at p. 50.

92. Fatima Mahmoud, "Building a Pan African Women's Movement," in Tajudeen Abdul-Raheem (ed.), *Pan-African: Politics, Economy and Social Change in the Twenty-First Century*, pp. 237-242 (New York: New York University Press, 1996) at p. 237.

93. Several meetings were held post-Kampala congress to discuss the modalities of this agenda, organized in Uganda, UK, Germany and Zimbabwe.

94. Tajudeen Abdul-Raheem, "Introduction: Reclaiming Africa for Africans," Note 20 at p. 9.

95. Ibid.

women's future integration in the movement.[96] But a clear lesson learnt from the Seventh PAC was that Pan-African feminism will not be achieved through workshops or one-off programmes, but through political organization at the level of the *wananchi*. Hence, PAWLO was dead in the water even before it hit the ground.

There is another dimension to the approach to Pan-Africanism via the framework of African states or their regional organizations. The African Union has former colonial and contending world powers to grapple with. Afrocentric unity would, of course, pose a serious threat to imperialists. Therefore, at every turn, they do everything possible to thwart its success. They create alliances with former colonies, support despots and dictators, foment and instigate insurgencies and unrest and generally maintain sufficient chaos on the continent that allows them to maintain the neocolonial project. A McCarthyist-type surveillance of serious efforts towards a Pan-African federation sweeps across the land and either appropriates or thwarts them. They maintain a presence at critical spaces such as the AU, including the construction of a swanky multi-storied AU headquarters in Addis Ababa by China. Handed over to the AU in 2011, the building is maintained by the Chinese government.[97] The hegemonic surveillance drive is also maintained by military outfits such as the U.S. Africa Command (AFRICOM) under the guise of anti-terrorism efforts.[98]

Another threat to Pan-Africanism lies in the UN-led sustainable development goals (SDGs). Ironically, the only woman ever elected as an African president, Ellen Johnson Sirleaf, who led Liberia between 2006 and 2018, played a significant role in the processes of developing the SDGs as co-chair of the High Level Panel on the post-2015 development agenda.[99] Nigeria's Amina Mohammed—the current deputy UN Secretary General—was also a

96. See Horace Campbell, "Resolutions of the Plenary 7th Pan-African Congress, Kampala, 1994," *African Journal of Political Science* 1(1) (1996): 113-133.

97. See Kingsley Ighobor, "China in the Heart of Africa: Opportunities and Pitfalls in a Rapidly Expanding Relationship," *Africa Renewal* (New York: United Nations Department of Public Information, January 2013).

98. See Christopher Isike, Ufo Okeke Uzodike and Lysias Gilbert, "The United States Africa Command: Enhancing American security or fostering African development?" *African Security Studies* 17(1) (2008): 20-38.

99. See Kole Shettima, "Achieving the Sustainable Development Goals in Africa: Call for a Paradigm Shift," *African Journal of Reproductive Health* 20(3) (2016): 19-21 at p. 19.

lead facilitator of the process.[100] The SDGs, which are the epitome of neoliberal strategies and coloniality practices to achieve "developmental" goals, do not dovetail with the political economy of Pan-Africanism.[101] For example, adopting the Public-Private Partnership (PPP) framework to finance infrastructure deficits in Africa will not promote the interests of the continent but those of finance capital. The third international conference on Financing for Development held in Addis Ababa in July 2015, specifically assigned the role of financing SDGs to the private sector.[102] This involvement of the private sector in public service provision is the latest guise of neoliberal globalization, and does not portend well with Pan-Africanist ideals.[103]

Raising awareness about these issues is key to Africa's survival. It is also imperative for all social movements on the continent. Activist/scholars such as Guyanese Walter Rodney, who taught for several years at the University of Dar es Salaam, were key in providing a clear-sighted pathway to Africa's liberation.[104] For Rodney, such liberation would not be achieved through a romanticized afrocentricism but rather, through a critical analysis of the continent's political economy.[105] Pan-Africanism for him needed to move beyond race to class analysis, to be as critical of Western imperialists as of neocolonial domestic exploiters.[106] His

100. Ibid.

101. See Abu Girma Moges and Mammo Muchie, "Innovating the Political Economy of Pan Africanism: Imagination and Renaissance," in Samuel Oloruntoba and Mammo Muchie (eds.), *Innovation, Regional Integration, and Development in Africa: Rethinking Theories, Institutions and Policies*, pp. 43-59 (New York: Springer, 2019).

102. See UN General Assembly Resolution 69/313, adopted on July 27, 2015, *Addis Ababa Action Agenda of the Third International Conference on Financing for Development* (Addis Ababa Action Agenda), A/RES/69/313. Available at: https://unctad.org/meetings/en/SessionalDocuments/ares69d313_en.pdf [accessed August 20, 2019].

103. Kate Bayliss & Elisa Van Waeyenberge, "Unpacking the Public Private Partnership Revival," *Journal of Development Studies* 54(4) (2018): 577-593.

104. Horace Campbell, "The Impact of Walter Rodney and Progressive Scholars on the Dar es Salaam School," *Social and Economic Studies* 40(2) (1991): 99-135.

105. Ibid.

106. Tunde Adeleke, "Black Americans and Africa," Note 35. Wazir Mohamed, refers to these domestic exploiters as "the business managers of foreign capital." See Wazir Mohamed, "Potency of Walter Rodney's Ideas 38 Years After Assassination," *Pambazuka News*, (June 15, 2018).

1972 book *How Europe Underdeveloped Africa* is a classic exposition of a historical-materialistic analysis of the continent's economies.[107]

During the colonial period, it was impossible for Africa to act as a bloc in its fight against colonialism, so the push-backs against colonial forces of power prior to formal independence were atomized, uneven and underpowered. Today, Africa's pushback against globalized neocolonialism is even weaker, thanks to its unviable states that are commandeered by imperial powers and their African comprador enablers who benefit from the system. Former Tanzanian President Julius Nyerere referred to African nations as "mini-states" because they have no substantive presence at the global table of geopolitical influence.[108] Tajudeen Abdul Raheem wondered how multilateral institutions such as IMF and the World Bank, which control Africa's major economic decisions, can be held accountable by unviable states.[109]

Historically, the ideology of nationalism has always been deployed to mobilize popular unity. Pan-Africanism was no different. A fictitious unity of diverse peoples is forged and imagined in the rhetoric of Blackness and imperialist colonization. It is sealed with the rhetoric of symbolic references alluding to an Africa with feminine features and the life-giving, nurturing qualities of women (captured in metaphors such as "Mother Africa"). It invokes "natural" love for the nation, similar to what one would supposedly have for one's mother. But Africa is increasingly experiencing the effects of narrow chauvinistic nationalisms at the expense of continental nationalism. At the core of these "nationalisms" one finds not the disenfranchised masses of Black people but rather, a small circle of mostly elite men whom Fanon termed as being "dusted over with colonial culture."[110] Needless to say, there is a definitively gendered patriarchal nature of these nationalisms, typically springing from what Cynthia Enloe

107. See Walter Rodney, *How Europe Underdeveloped Africa* (Nairobi: East African Educational Publishers, 1972).

108. Issa Shivji, "Pan-Africanism in Mwalimu Nyerere's Thought," *Pambazuka News* (May 07, 2009), available at: https://www.pambazuka.org/pan-africanism/pan-africanism-mwalimu-nyerere's-thought[accessed August 6, 2019].

109. Tajudeen Abdul Raheem, "Pan-Africanism and Constitutionalism," in J. Oloka-Onyango, *Constitutionalism in Africa: Creating Opportunities, Facing Challenges*, pp. 52-65 (Kampala: Fountain Publishers, 2001) at p. 59.

110. Franz Fanon, *The Wretched of the Earth* (London: Penguin, 1963) at p. 47.

describes as, "masculinized memory" and "masculinized hope."[111] Feminist scholars have generally analyzed the problematic of nationalist ideologies, exposing the gender power of patriarchy that informs them.[112]

At the 50th Anniversary AU summit in Addis Ababa on June 28, 2013, Amina Mama addressed the AU heads of states with these cautionary words:

> The date tells us our celebrations are due, but the data caution us. I appeal to you to stay alert to the discontents of women, youth, and many millions of marginalized others, inhabiting mining areas, oil drilling areas, our great savannah lands, forests and deserts, coastlands and highlands… Honourable leaders please do not ignore the African Spring, and so imperil the future we seek… I respectfully submit that the secret of African resilience is something we take so much for granted that we too easily overlook it, and fail to value and cherish those who have thus far sustained us, at our peril. I speak of the quiet power of African women…[113]

The 8th PAC, held in Accra in 2015, passed a resolution to strengthen global solidarity and amplify the voice of the Pan-African women's movement. It committed to "recognizing and appreciating the inherent linkages, inseparability and complementarity between the struggle for women's emancipation and gender justice and the struggle for Africa's liberation and development." Significantly, the Congress passed an important gender-related resolution.[114] Some may dismiss the twenty segments of this resolution on African

111. Cynthia Enloe, *Bananas, Beaches and Bases: Making Feminist Sense of International Politics* (Berkeley, University of California Press, 1989) at p. 44. See e.g., C. E. Donkoh's book entitled *Mother Africa Mourns Kwame Nkrumah, the Emancipator* (Legon, Ghana: University of Ghana, 1978). Diasporic Africans such as W.E. Du Bois and writer Richard Wright also constantly referred to their desire to return to "Mother Africa."

112. E.g., Anne McClintock, "*Family Feuds: Gender, Nationalism, and Family*," *Feminist Review* 44 (1993): 61-80; Kumari Jayawardena, *Feminism and Nationalism in the Third World* (London: Zed Press, 1986); 3); and Floya Anthias and Yuval-Davis, *Women-Nation-State* (New York: St. Martin's Press, 1989).

113. Amina Mama, "Pan-Africanism: Beyond Survival to Renaissance?" (June 28, 2013), available at: http://www.opendemocracy.net/5050/amina-mama/pan-africanism-beyond-survival-to-renaissance [accessed August05, 2019].

114. See Pan-African Lawyers Union, "Resolutions of the 8th Pan-African Congress," *Pambazuka News* (March 19, 2015), available at: https://www.pambazuka.org/pan-africanism/resolutions-8th-pan-african-congress [accessed September 3, 2019].

women as merely symbolic on the part of the male-dominated PAC. However, the symbolic value of these comprehensive commitments should not be underestimated. Indeed, women can always return to these resolutions in demanding action and accountability from the Pan-African Movement. For example, the reference to sustainable land policies found in clause 8 of the resolution is extremely important for an agrarian Pan-African continent and resonates with calls such as those by the Pan-African Programme on Land and Resource Rights (PAPPLR) to regenerate local economies through mass-driven initiatives.[115] The resolution is certainly a far cry from the generic commitment dished out at the 6th PAC in Dar es Salaam.

The Pan-African Movement was given a welcome boost in January 2019 when the AU adopted the Protocol on Free Movement of Persons in Africa.[116] The Protocol envisages that the creation of free movement across a continent with seamless borders will promote economic, social and cultural development on the continent.[117] The reality is that African *wananchi,* in their day-to-day existence, hardly respect the made-in-Berlin borders; just as global finance capital does not respect borders when exploiting and dominating African states. As Tajudeen Abdul-Raheem observed: "You will see the peasants, petty traders carrying their wares across the boundary on *panyapanya* roads [informal roads] parallel to the formal border roads, while those of us with passports are waiting to cross over on either side in our vehicles. These peasants just carry on as good Pan-Africanists, ignoring the tarred road and officials."[118] What is important to note is that the majority of these

115. Clause 8 provides: "Push for equal access to, control over and ownership of Africa's resources (between men and women) – ensure progressive land policies and secure access to land rights for African women." See Munyaradzi Saruchera, "Introductory Overview," in Munyaradzi Saruchera (ed.), *Securing Land and Resource Rights in Africa: Pan-African Perspectives,* pp. 1-8 (Cape Town: University of Western Cape School of Government, 2004).

116. This was part of the AU Agenda 2063—Africa's Master Plan and Strategic Framework—which underscores the free movement of Africans around the continent for meaningful integration.

117. African Union Press Release, "AU protocol on free movement is a watershed moment for Africa; EALA and ECOWAS legislators' meeting kicks off," (June 12, 2019). Available at: https://au.int/en/pressreleases/20190611/consultative-meeting-parliamentarians-east-african-community-and-economic [accessed August 7, 2019].

118. Tajudeen Abdul-Raheem, "Africa without Borders," Note 68 at p. 94.

informal traders who crisscross borders via *panya* routes are women.[119]

Thirty out of the 54 African states signed on to the Protocol and it needs 15 ratifications to come into force. However, the two economic giants on the continent, namely Nigeria and South Africa, have not yet signed up, highlighting the challenges that the continent still faces in transcending narrow nationalistic sentiments. South Africa's reasons for its reservation about signing the Protocol include issues regarding securitization, harmonization of policies and legislation, and a preference for a phased approach to free movement of persons.[120] For Nigeria's part, Gambari expressed his skepticism about the successful implementation of the Protocol, when he observed that "experience elsewhere, including ECOWAS, has shown that this is a particularly difficult provision to implement as the natural and rational tendency is for Community citizens to migrate from poorer to richer Member States."[121] Are there lessons for Pan-Africanism to be learned from the millions of "border-blind" African women who engage in cross-border trade around the continent? How can the "panyarization" of Africa be achieved? It will take tremendous political will and feminist revisioning on the part of those at the helm of power and economic statecraft to achieve this daunting strategic objective of the African Union.

Pan-Africanism in African Feminism

African feminists are extremely wary of the Pan-African strategy

119. See e.g., Dzodzi Tsikata, "Informalization, the Informal Economy and Urban Women's Livelihoods in Sub-Saharan Africa Since the 1990s," in Shahra Razavi (ed.), *The Gendered Impacts of Liberation: Towards "Embedded Liberalism"?* pp. 131-162 (New York: Routledge, 2009); and Akosua Darkwah, "Making Hay While the Sun Shines: Ghanaian Female Traders and their Insertion into the Global Economy," in Nandini Gunewardena and Ann Kingsolver (eds.), *The Gender of Globalization: Women Navigating Cultural and Economic Marginalities,* pp. 61-83 (Santa Fe, NM: School for Advanced Research Press, 2007).

120. See Department of Home Affairs, "South African Position on the Implementation of the African Union (AU) Agenda 2063 as it Relates to Migration, Regional Integration and Africa Passport" (November 2017) available at: https://pmg.org.za › files [accessed September 8, 2019].

121. Ibrahim Gambari, "The Political Implications of the African Economic Community," Note 70 at p. 69.

that prioritizes the achievement of state power before tackling other oppressive structures. Kwame Nkrumah's famous words, "Seek ye first the political kingdom and all things shall be added onto you" epitomized this empty promise. The benefit of 20/20 hindsight has allowed feminists to understand that heteropatriarchal-capitalist power is all pervasive and that social inequalities have only increased after half a century of formal independence. Such skepticism was captured by Hakima Abbas and Amina Mama responding to the 2013 AU 50th anniversary rhetoric: "There is a troubling irony in the sudden 'discovery' of African women by the AU, multinational corporations and development agencies, half a century after women actively participated in independence struggles and contributed significantly to African liberation movements."[122]

The third UN conference on women which was hosted on African soil in 1985 helped to rally African women into transnational organizing. In the post-Nairobi phase of African feminism, several Pan-African organizations and initiatives took root to ensure that the interests and concerns of African women did not fall by the wayside. Among these was the establishment of the African Women's Development and Communication Network (FEMNET) in 1988. A Pan-African non-governmental organization designed to facilitates women's rights activism across state borders, FEMNET played a crucial role in coordinating the passing of the Protocol to the African Charter on the rights of women in Africa (Maputo Protocol).[123] Founded in 1990, Women in Law and Development in Africa (WiLDAF) focused on women's engagement with the law. The African Women Lawyers Association (AWLA), with chapters in several countries, is devoted to pursuing the rights of women and children. The regional network Solidarity for African Women's Rights (SOAWR)—a coalition of over 40 women's organizations around the continent—plays an active role in placing African women's rights firmly on the AU agenda. SOAWR plays a pivotal role in ensuring that the Maputo Protocol is ratified and domesticated around the continent.[124] The African Women's

122. Hakima Abbas and Amina Mama, "Feminism and Pan-Africanism," Note 46 at p. 2.

123. See http://femnet.co/index.php/en/ [accessed August 05, 2019].

124. See Brenda Kombo, Rainatou Sow and Faiza Mohamed, *Journey to Equality: 10 Years of*

Development Fund (AWDF) is a Pan-African women's grant maker at the cutting edge of social justice and women's rights philanthropy on the continent.[125] AWDF has enhanced the capacity of African women's movements and supported their programmes through its innovative grants, making its mark at the AU.[126]

The African Feminist Forum (AFF) is a biennial conference that brings together African feminists to strategize on the advancement of women's rights and ensure that the achievements are not rolled back.[127] Other regional organizations and networks actively working on the issue include Coalition of African Lesbians (CAL), African Sex Workers Alliance (ASWA)[128] and Women Living under Muslim Law Solidarity Network (WLUML). The Association of African Women for Research and Development (AAWORD) is a Pan-African network that was established way back in 1977 undertaking and supporting research, training and advocacy for promoting African women's socioeconomic and political rights. Indeed, African feminism has been operating *sans frontières* (without borders) for decades, constructing bridges across the complexities of cultures, languages, religions, skin tone, educational status and generations.

Despite all these achievements, transformational Pan-African feminism is heavily restricted by a myriad of challenges. Perhaps the tallest challenge of all is the fact that the majority of Pan-African women's organizations seek liberation within the imperial and colonial/modern systems that women seek to reject (e.g., through the Western liberal rights-based paradigm).[129] Moreover, African feminists, like all social justice activists, are being pushed into an

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the Protocol on the Rights of Women in Africa (Nairobi: Equality Now, 2013), available at: http://www.equalitynow.org/sites/default/files/MaputoProtocol_JourneytoEquality.pdf [accessed December 21, 2013]. Also see http://www.soawr.org/ [accessed August05, 2019].

125. http://awdf.org/wp-content/uploads/AFF-Feminist-Charter-Digital-%C3%A2%C2%80%C2%93-English.pdf [accessed June 18, 2020]

126. Ibid.

127. See http://www.africanfeministforum.org/ [accessed August 5, 2019].

128. For a detailed analysis of Africa's sex workers' movement, see Chi Mgbako, *To Live Freely in this World: Sex Worker Activism in Africa* (New York: New York University Press, 2016).

129. See Akhona Nkenkana, "No African Futures without the Liberation of Women: A Decolonial Feminist Perspective," *Africa Development* 40(3) (2015): 41-57.

ever-shrinking civil society space where operating safely and legally nationally, let alone transnationally, is becoming much harder. Authoritarian state polities maintain a stranglehold on any work that threatens their sociopolitical and institutional power. Additionally, women face financial scarcity in executing the costly Pan-African work in conditions of poor infrastructural facilities such as transportation, communication systems and itinerant power supply. This means that the bulk of this work is dependent on donor funding, which is unreliable, unsustainable and always comes with colonial strings attached.[130]

Another challenge lies in the multiplicity of languages—both Indigenous and colonial—which act as fortresses that block African people from linking up with each other. Language politics create barriers between and within countries, between the urban and the rural, the educated and those without formal education, among sub-regional enclaves, across cultures and so forth. Finally, any transformative activist agenda requires a great deal of personal sacrifice and voluntarism—attributes that often lead to women's overload, burnout and adverse mental/physical health outcomes. While all activists, regardless of gender, face similar challenges, for women juggling feminist engagement, activism (whether frontline or intellectual) and unpaid family/community care under neoliberal pressures stretches the limits of human capacity and endurance. All these challenges take a heavy toll on African feminist attempts to build strong and strategic networks and to multiply the impact of their work across the continent.

Somehow, African women always come out on top and sustain their communities despite the challenges. Feminists may remain invisible in mainstream spaces and discourses but they impact societies. In many ways they are "superwomen" when it comes to creativity and adaptability in all their work. They have seriously been intellectually engaged with Pan-African politics. The journal *Feminist Africa*, launched in the year 2000, devoted two of its issues (numbers 19 and 20) to the topic of Pan-Africanism. Hakima Abbas and Amina Mama reported: "The feminist movements on the

130. See Dambisa Moyo, "Why Foreign Aid is Hurting Africa, *The Wall Street Journal*, (March 21, 2001); and Stephen Browne, *Aid and Influence: Do Donors Help or Hinder?* (New York: Earthscan, 2006).

African continent are shaped by Pan-Africanist visions, yet they pursue a critical engagement both with the bureaucratic and political structures of the African Union, and with the broad range of political and civil society formations, calling them to account in numerous ways, thus continuing the more progressive possibilities that pan-Africanism offers Africans in contemporary times."[131]

Pan-African feminist organizing reached its peak in 2006 when AWDF organized the first ever African Feminist Forum (AFF) in Accra, Ghana.[132] Significantly, Accra remains the city where the Pan-Africanist political fervor still flows, decades after Nkrumah's demise. Over 200 delegates from all corners of the continent attended this important conference where they adopted the *Charter of Feminist Principles for African Feminists.* The preamble to the Charter boldly declares:

> We define and name ourselves publicly as Feminists because we celebrate our feminist identities and politics. We recognize that the work of fighting for women's rights is deeply political, and the process of naming is political too. Choosing to name ourselves Feminist places us in a clear ideological position. By naming ourselves as Feminists we politicise the struggle for women's rights, we question the legitimacy of the structures that keep women subjugated, and we develop tools for transformatory analysis and action.[133]

So far, the Charter has been translated into Kiswahili, Wolof and French.[134] Three subsequent AFF convenings have been held in Uganda (2008), Senegal (2010) and Zimbabwe (2016). The regional forum has created important national spinoffs in various countries around the continent, including Ghana, Uganda, Nigeria, Central African Republic, Senegal, Liberia, Mali and Rwanda. Many other countries have organized related activities at national and sub-regional levels.

African feminists have been shaped by African women's diverse

131. Hakima Abbas and Amina Mama, "Feminism and Pan-Africanism," Note 46 at p. 6.

132. See http://www.awdf.org/ [accessed August 5, 2019].

133. The Charter is available at: http://awdf.org/wp-content/uploads/AFF-Feminist-Charter-Digital-%C3%A2%C2%80%C2%93-English.pdf [accessed June 18, 2020]

134. Translated versions available at: http://www.africanfeministforum.com/feminist-charter-introduction/ [accessed August 7, 2019].

experiences interacting with and within capitalist patriarchal structures, systems and social relations. The Preamble to the Charter demonstrates AFF's nuanced understanding of the complexity of patriarchal control:

> Patriarchy varies in time and space, meaning that it changes over time, and varies according to class, race, ethnic, religious and global imperial relationships and structures. Furthermore, in the current conjunctures, patriarchy does not simply change according to these factors, but is inter-related with and informs relationships of class, race, ethnic, religious, and global-imperialism. Thus to challenge patriarchy effectively also requires challenging other systems of oppression and exploitation, which frequently mutually support each other.

As we have seen, African women activists have always maintained linkages with African liberation movements. They have also operated transnationally in all spheres of their lives. But, while Pan-African feminism is clear in its political and ideological struggle against heteropatriarchal-capitalist power, it has been quite peripheral to the mainstream Pan-African Movement and made little effort to integrate its perspectives into that movement.

African feminism has been influenced by but not based in the Pan-African Movement. Much more needs to be done not only to push the feminist agenda into Pan-Africanism, but also to work hand-in-hand with all sectors of grassroots African civil society and *wananchi* to resuscitate the limping Pan-African Movement. Feminist intellectuals have a duty to create a knowledge base that will inform a transformational Pan-African Movement. Research organizations such as AAWORD and the Council for the Development of Social Science Research in Africa (CODESRIA) present significant Pan-Africanist opportunities for deepening transdisciplinary research and networking. Indeed efforts by African feminists to engender CODESRIA's programmes and knowledge production date back to the 1990s.[135] Such efforts would

135. E.g., the Dakar workshop on "Gender Analysis and African Social Science," organized by CODESRIA in 1991 was a result of such prompting. It culminated in the publication of the anthology *Engendering African Social Sciences*, edited by Ayesha Imam, Amina Mama and Fatou Sow. The organization also runs annual residential Gender Institutes under different themes, aimed at strengthening the scholarship and

foster a critical convergence of the two movements. Studies on these issues need to adopt a multi-dimensional approach to Pan-Africanism beyond the economistic one that dominates current efforts.[136] The aim should be to rearticulate and reinstitute the disrupted space of Pan-Africanism in this era of neoliberal globalization with the feminist principles of inclusivity, community, dialogue, social equity and accountability.

An example of the route such struggles should take can be found in a critical review of the Renaissance Monument unveiled in Dakar, Senegal in April 2010 by then-President Abdoulaye Wade. As if in a conscious effort to will Africa's rebirth into existence, "Le Monument de la Renaissance Africaine" was unveiled in a ceremony coinciding with the 50th anniversary of the country's formal independence from French colonial rule. Standing 49 metres high, the gigantic bronze monument is the tallest statute on the continent and cost a total of USD 27 million. The statue depicts three figures—a man, a woman, and a child—emerging triumphantly from the interior of a jagged volcano (see figure 1 below). *Atlas Obscura* described the monument as "a towering piece of brutal Stalinist machismo."[137] To demonstrate the emptiness of Pan-African consciousness and vision that undergird this symbolism, the monument was designed and constructed by non-Africans. To top it all, President Wade laid claim to monetary royalties from the tourist earnings generated therefrom.[138] This is despite the fact that he conceived of the idea in his capacity as the state president, the land on which it is erected is public land, and the funds that constructed it were taxpayers' money.[139] But most

analytical skills of young researchers. See Preface to Jane Bennett and Sylvia Tamale (eds.), *Research on Gender and Sexualities in Africa*, (Dakar: CODESRIA, 2017).

136. The economistic agenda is evident in Africa's Agenda 2063. See African Union, "Agenda 2063: The Africa We Want," available at: https://au.int/en/agenda2063/overview [accessed September 8, 2019]. Also see Dzodzi Tsikata, "Being Pan-African: A Continental Research Agenda," *Feminist Africa* 19 (2014): 94-97.

137. Atlas Obscura, "Africa's Statue of Liberty is a Surreal Mix of Corruption and Sexism," (May 2, 2014): https://atlasobscura.kinja.com/africas-statue-of-liberty-is-a-surreal-mix-of-corruptio-1571050016 [accessed September 5, 2019]. Indeed, many Senegalese critics have condemned the monument, pointing out its close resemblance to a Russian stakhanovite statue.

138. See Tidiane Sy, "Senegal Colossus Proves Sore Point," *BBC News* (November 16, 2009). Available at: http://news.bbc.co.uk/2/hi/africa/8353624.stm [accessed August 9, 2019].

139. Ibid.

disturbing about the monument and its resignification of Africa is its reproduction of colonial discourses about African women's bodies and sexuality.

Figure 1 Le Monument de la Renaissance Africaine (© photo Marco Chown Oved)

In her compelling feminist analysis of the monument, Ayo Coly reveals at least three broad contexts that the half-naked female body invokes for Pan-Africanism. First of all, it re-enacts the colonial trope of the sexually promiscuous, shameless and over-sexed Black woman. The public gaze that the scantily dressed female body is reminiscent of the privileges of the empire and the savage imagery of the natives. Coly notes:

> As a colonial gesture and discursive production, the unclothed African female body aligns with the 'unclean' African body and the 'unwell' African body in simultaneously constructing a body in need of intervention and legitimising the colonisation of African bodies. The seminal gesture of unclothing the female body made possible the subsequent gesture of clothing, both colonial gestures seizing the African female body to denote Africa's proximity with civilisation, morality and normalcy… Indeed, clothing the African female body

became a justificatory metaphor for the colonial project of reforming Africans.[140]

Secondly, the female body in the monument serves as an index for globalization:

> In light of the narratives about the gender politics of Moslem societies…, unclothing the African Moslem female body or exposed African Moslem female flesh convert into ideological, political and cultural currency on the global stage. If the monument, in the words of the Senegalese President Abdoulaye Wade, represents the new Africa, the unclothed female body serves as a rhetorical trope for that new Africa. The spectacle of the unclothed female body for the global stage performs a 'palatable' Islam and modern Africa by projecting the image of an emancipated womanhood. The liberation theme is compounded by the fact that the woman is unburdened. She is carrying nothing, not even her child.[141]

And finally, her body is used as a symbol of male-led liberation of African women:

> Ultimately the unclothed female body is a rhetorical accessory of modern African masculinity. The unclothed and unburdened female body speaks to and serves to showcase an emancipated African manhood. Hence the gesture of carrying the baby is carefully chosen to project a man who liberates his mate from the burden of motherhood. In other words, the nation, meaning postcolonial men, has liberated its women. Men take credit for the liberation of women. But that gesture of liberation falls short as the baby is carried as a prize, as an achievement, a symbol of masculine virility. The position of the three figures also undermines the projected message of female liberation and emancipated manhood. The man has a central place in the visual narrative. He leads the action and is the exclusive head of his modern Western-style nuclear household.[142]

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140. Ayo A. Coly, "Un/Clothing African Womanhood: Colonial Statements and Postcolonial Discourses of the African Female Body," *Journal of Contemporary African Studies* 33(1) (2015): 12-26 at p. 14.

141. Ibid. at p. 23.

142. Ibid. at p. 24.

Coly clearly shows how, through this monumental body/landscape, the deep-seated colonial and patriarchal stereotypes are reinforced, symbolically pervading the *mindscapes* of all those partaking of its massiveness. Indeed, the Renaissance Monument stands like a gigantic facet of the hegemonic discourses of masculine neoliberal globalization, spitting in the face of the struggle for a genuinely progressive and feminist African future.[143]

Developing a New Pan-Africanism in the Era of Globalization

When Pan-Africanism was first conceived in the late nineteenth and early twentieth centuries, the phenomenon of globalization as we currently know it had not taken root. What does neoliberal globalization portend for Africa's desire for continental unity? Can an African renaissance come to pass against the backdrop of Western socioeconomic and cultural universalization? Is a postcolonial state-based struggle for Pan-Africanism even viable? We all know that the sovereignty and power of states around the world have been greatly undermined by the forces of globalization. This negative development can actually have some positive outcomes for Africa. In the first instance, it cracks open the door of optimism by having the potential to strategically coalesce the weakened states in order to galvanize for a federated Africa. Secondly, globalization has reawakened the anti-imperialist consciousness around the world manifested in the anti-capitalist movements against the World Trade Organization and the G-7.[144] There is considerable global disillusion with the results of the neoliberal machinations which have characterized the first two decades of the 21st century. Africa can take advantage of the crisis faced by capitalism and act towards Afrocentric self-determination.

On the negative side, however, neoliberal globalization has flung open the doors for new avenues of exploitation that undermine

143. Anias Mutekwa, "Gendered Globalisation Discourses: Implications for the African Renaissance," *International Journal of African Renaissance Studies—Multi-, Inter- and Transdisciplinarity* 7(1) (2012): 5–21.

144. Dani Wadada Nabudere, "The African Renaissance in the Age of Globalization," *African Journal of Political Science* 6(2) (2001): 11–27.

the Pan-Africanist and feminist agendas. Today, the "globally hegemonic neoliberal discourse dominates African economic policies."[145] And women are taking the brunt of austerity policies and structural reforms.[146] Moreover, unconscionable colonial pacts that were signed as preconditions to flag independence are still intact today, maintaining the lopsided colonial politico-economic relations and further complicating the extrication process.[147] Most significant is the agreement signed between France and twelve of its former colonies plus Guinea-Bissau, which turned the latter into the *chasse gardée* (private hunting ground) of their former colonial master.[148]

According to Wadada Nabudere, Africa is trying to reimagine and reinvent itself in the twenty-first century through the concept of the African renaissance.[149] But to be successful such renaissance must be rooted in African cultures. In other words, the same anti-imperialist struggles that Africans exhibited against colonial acculturation processes in the nineteenth and twentieth centuries should be reignited to engender African nationalism. Not to be mistaken for a tribalist, Nabudere explains:

> Culture and ethnicity are constructed differently by the different social classes on the continent. The African elites utilize ethnicity in form of neotribalism and neo-traditionalism to maintain their power in the post-colonial, neocolonial states. On the other hand, the African people have utilized ethnicity and cultural revivalism to survive the effects of modernization and globalization in the form of post-traditionalism.

145. Lyn Ossome, "In Search of the State? Neoliberalism and the Labour Question for Pan-African Feminism," *Feminist Africa* 20 (2015): 6-25 at p. 8.

146. Barney Karuuombe, *NEPAD: A New Partnership between Rider and Horse* (Windhoek: Labour Resource and Research Institute (LaRRI), 2003). Available at: https://sarpn.org/documents/d0000406/P374_LaRRI_NEPAD.pdf [accessed Dec 31, 2019].

147. See Victor T. Le Vine, *Politics in Francophone Africa* (Boulder, Colo.: Lynne Rienner, 2004); and Martin Meredith, *The State of Africa: A History of the Continent Since Independence* (London: Simon & Schuster, 2011).

148. See chapter two for a more detailed discussion of the Colonial Pact. Also see Ama Biney, "Decolonial Turns and Development Discourse in Africa: Reflections on Masculinity and Pan-Africanism," *Africanus* 43(2) (2013): 78-92 at pp. 82-84 and Martin Meredith, *The State of Africa*, Note 147 at p. 70.

149. Dani Wadada Nabudere, "The African Renaissance in the Age of Globalization," Note 144 at p. 15.

> Thus in the emergence of the African renaissance, the same phenomenon can be observed.[150]

The cultural revivalism that would act as a catalyst to Africa's renaissance would have to re-centre African languages.[151] However, scholars like Issa Shivji are not impressed with the idea of an African renaissance. He argues that Africans need to rise above the rhetoric of renaissance and recognize what is really at stake, pointing out that:

> Soon after the fall of the Berlin Wall imperialism mounted a frontal ideological attack on third world nationalism. Whatever was left of African nationalism, even of its territorial variety, was discredited, if not destroyed, in the rhetoric of globalization… SAPs moved from the realm of economics to politics, from policy to ideology, from adjusting our economies to accommodating theirs. Masses, who we once said were the prime subject of history, became the object of poverty reduction strategy papers or PRSPs. Country SAPs combined with PRSPs and became the continental NEPAD (New Partnership for African Development). Forward looking African nationalism, which traced its genesis to Pan-Africanism, was displaced by the African Renaissance, a spurious echo of European history.[152]

Indeed, the language of "African renaissance" has been appropriated and propagated by Western imperialists. The IMF, for instance, has suggested initiatives that will lead to an Africa's renaissance. These include, *inter alia*, international partnerships:

> [I]t goes without saying that Africa cannot take on these huge tasks alone. The IMF can help—and is helping—through advice and technical assistance designed to strengthen administrative capacity and institutions. Furthermore, I am pleased to note that the IMF has put the ESAF, our concessional lending facility, on a permanent footing, so that it can continue to support the reform efforts in low-income

150. Dani Wadada Nabudere, "The African Renaissance in the Age of Globalization," Note 144 at p. 16.

151. Kwesi K. Prah, (1998), *Between Distinction and Extinction: The Harmonization and Standardization of African Languages*, Casas Book Series No. 1 (Johannesburg: Witwatersrand University Press, 1998) at pp. 70-71.

152. Issa Shivji, *Where is Uhuru?* Note 4 at p. 204.

countries, especially in Africa. Let us now reflect on the role for Africa's other international partners. *This is a role that is both important and significant to continuing the African renaissance*. In addition to extending concessional financing, Africa's partners must provide appropriate and targeted technical assistance, and assist in the transfer of the necessary technical and managerial skills.[153] [emphasis supplied]

Hence, according to the IMF Deputy Director, Africa is already on the renaissance path. African analysts of political economy have convincingly demonstrated how the continent's relations with the multilaterals have only entrenched conditions of dependency and underdevelopment.[154] The Bretton Woods institutions also welcomed the New Partnership for Africa's Development (NEPAD) launched in 2001 as Africa's blueprint for accelerating its rebirth.[155] NEPAD's neoliberal orientation has been heavily criticized by several regional think tanks such as the Organization for Social Science Research in Eastern and Southern Africa (OSSREA) and the Southern and Eastern African Trade Information and Negotiations Institute (SEATINI).[156]

The politically-correct rhetoric on gender in this blueprint for Africa's renaissance is just that; not only did its architects ignore women's participation in its formulation processes, but they seemed to be totally illiterate in the root structural causes of gender injustice, Western modernity and its coloniality.[157] The Bretton

153. Alassane D. Ouattara, "The IMF's Role in the Unfolding African Renaissance," (June 11, 1998), available at: https://www.imf.org/en/News/Articles/2015/09/28/04/53/sp061198 [accessed August 9, 2019].

154. See e.g., Issa Shivji, "The State in the Dominated Social Formations of Africa: Some Theoretical Issues," *International Social Science Journal* 32(4) (1980): 730–42; Thandika Mkandawire, "Maladjusted African Economies and Globalisation," *Africa Development* 30(1 & 2) (2005): 1–33; and Achille Mbembe, *On the Postcolony* (Stanford, CA: Stanford University Press, 2001).

155. E.g., see J. Mills and J. Oppenheimer, "Partnerships only way to break cycle of poverty," *Financial Times*, (October,1, 2001); and G. Gondwe and C. Madavo, "New swipe at fighting poverty," *Financial Times*, (October 7, 2001).

156. E.g., see Yash Tandon, "On NEPAD: Critical Civil Society Perspectives," *SEATINI Bulletin* 5(4) (2002).

157. See Philomina E. Okeke and Godwin Onu, "Women, NEPAD and Nation Building: Revisiting a Dying Debate," *African Sociological Review* 10(2) 2006: 72-93; and Zo Randriamaro, "NEPAD, Gender and Poverty Trap: The NEPAD and the Challenges of Financing for Development in Africa from a Gender Perspective," Paper Presented at the Conference on Africa and Development Challenges of the New Millennium, (Accra, Ghana, 23- 26 April, 2002).

Wood institutions are expert sites for "naturalizing" neoliberal ideologies. Instead of offering tools to develop a new ideological and political agenda for Pan-Africanism, IMF's counsel simply reinforces the neoliberal status quo. Instead of delivering African people from the legacy of colonialism, it sinks them deeper into colonial structures. In order to extricate itself from neocolonial bondage, it would be instructive for Africa to heed Samir Amin's call for new anti-capitalist imaginaries that would end imperialist monopolies on the continent.[158] In this quest, not only should Africa build more egalitarian alliances with other regions in the global South, but it must work closely with the feminist movements around the continent for an inclusive agenda.

The Pan-African Movement and the African feminist movement need to find a nexus between their agendas. Each movement has lessons for the other. Feminists have transcended imposed state borders to reach out to various women across the continent. Their organization and mobilization has focused on African women and not African states. The Pan-African Movement on the other hand has largely been driven by state leadership which is mostly made up of compradors who have the currency to maintain centres of power or, as Catherine Boone argues, "who passively collect 'rents' generated by foreign capital and the state."[159] More than ever before, the two movements need to converge in addressing the colonial politics that undergird the continent's underdevelopment. Pan-Africanism needs to be driven by non-state actors, particularly the *wananchi*. The bourgeoisie running the states have the least to gain from the continent's unity, while African *wananchi* have everything to benefit from it.

At the end of the day, the uniting decolonial ideology for Pan-Africanism must be anti-imperialist, anti-patriarchal and anti-militarist. It must jealously safeguard the interests of those who suffer from intersectional oppression on the basis of their gender, social status, ethnic and cultural origin, sexuality, disability, age and other grounds. It is therefore crucial that Africa rearticulates

158. See Samir Amin, *Ending the Crisis of Capitalism or Ending Capitalism?* (trans. Victoria Bawtree) (Oxford: Pambazuka Press, 2010).

159. Catherine Boone, "Commerce in Côte d'Ivoire: Ivorinisation Without Ivorian Traders," *Journal of Modern African Studies* 31(1) (1993): 67-92 at p. 67.

and sharpens the Pan-African ideology. The global Pan-African struggle should tap into existing non-state Pan-African initiatives to build a united, integrated and progressive USAf.[160] Despite all the challenges, the spirit of Pan-Africanism is still alive both on the continent and in the diaspora which provides a firm basis for rebuilding the movement. Finally, the Pan-African ideology should reject all intra-continental imperialism and hegemony. The decolonization agenda and decolonial politics are closely bound up with the Pan-African one. Therefore, if Africa is ever going to realize its liberatory vision, it must consciously revitalize Pan-African nationalism outside state structures and mainstream institutions. A Pan-African Movement divorced from statecraft and patriarchal politics. Only then would Africa breathe life into the symbolic date of May 25–African Liberation Day.

It is an Africa with its individual communal bittersweetness.
Africa is simply the world we live in with all of its
capacities for wounding and healing, for good or for evil.
It is a world, an Africa that tries to free itself from
the many prisons that divide us the one from the other;
prisons either communal or individual
or both, but always bitter and sweet; always bittersweet.
—Karen King-Aribisa[161]

160. Examples include continental movements and networks of the youth, feminists, trade unions, civil society actors, farmers' cooperatives, sexual minorities and so forth.

161. Karen King-Aribisa, "What Is Africa to Me Now? The Sweet, the Bitter..." *Research in African Literatures* 46(4) (2015): 15-25 at p. 25.

Epilogue: Decolonizing Africa in the Age of Big Data

No continent has been more adversely affected by the scourge of colonization than Africa. At the same time, no continent has proven to be more resilient to the debilitating effects of that experience than Africa. So much so that a fresh scramble for the continent is currently underway. With each wave of interference, Africa has been exploited and plundered while being pushed to the margins of global geopolitics. Such history has left an indelible blot on the continent's health and wellbeing. However, even with the colonial DNA-prints evident all over Africa's history, it is not necessarily its destiny. African people can reinvent their lives free of manipulated colonial structures, discourses and identities. As imperialists renew and escalate their recolonization efforts, Africans must sharpen their struggles against the foundations of colonialism and address gender, socioeconomic, political and ecological justice. Before such a journey can be commenced, there is need to clearly understand how the colonial and neocolonial systems work. The macro-logics of imperialism and liberalism are deployed to "Other" and subjugate Africa and its people, while the micro-operations of modernity and coloniality shape local contexts. The continent needs to employ anti-colonial, anti-capitalist, anti-racist and feminist approaches to successfully challenge the existing world order. Indeed, the decolonization/decolonial project for Africa is a daunting one. In this epilogue I examine another huge challenge to Africa's decolonization project—the phenomenon of digital colonialism.

As the continent is still grappling with the deep legacies of colonialism such as globalization and the colonization of the mind, the world has witnessed the transformation into yet other forms

of power and domination which are yet to fully seep into African public awareness. The twenty-first century confronts the continent with a novel form of colonialism. Described as data/digital capitalism, it "combines the predatory extractive practices of historical colonialism with the abstract quantification methods of computing."[1] It involves processes where, "largescale tech companies extract, analyze, and own user data for profit and market influence with nominal benefit to the data source."[2] This means that decolonization and decolonial strategies have to first come to terms with these new forms of power if the project is to succeed.

The empire of postmodern capitalism is spreading like wildfire, not by force of arms but through manipulating our desires and sucking us into its monoculture. It is achieving this through what Couldry and Mejias describe as, "capitalization of life without limit."[3] Milan and Treré urge us to interrogate this phenomenon through a decolonial lens: "To understand the complexity of data extraction, storage, and processing in the Souths, it is essential… to situate them within the historical processes of domination, extraction, exploitation, and oppression that are central to the modern world—and that continue to be predominant to this day. A decolonial lens—rather than a postcolonial one, of Anglo-Saxon origin—is particularly apt to critically explore the complexity of these processes."[4]

Capitalism has greatly transformed in the last five decades. Although the full effects of these changes are not as prominent in the underdeveloped economies of Africa, many of their features are already well established there. New types of "data relations" have emerged whereby humans engage in online activities or using data-emitting devices that allow data to be extracted and commodified

1. See Nick Couldry and Ulises A. Mejias, "Data Colonialism: Rethinking Big Data's Relation to the Contemporary Subject," *Television & New Media* 20(4) (2019): 336–49 at p. 337.
2. Danielle Coleman, "Digital Colonialism: The 21st Century Scramble for Africa through the Extraction and Control of User Data and the Limitations of Data Protection Laws," *Michigan Journal of Race & Law* 24(2) (2019): 417-440 at p. 417.
3. Nick Couldry and Ulises A. Mejias, "Data Colonialism," Note 1 at p. 336.
4. Stefania Milan and Emiliano Treré, "Big Data from the South(s): Beyond Data Universalism," *Television and Media* 20(4) (2019): 319-335 at p. 326.

in both "public" and "private" gendered spaces.[5] Indeed, social life has become "an 'open' resource for extraction that is somehow 'just there' for capital."[6] Today there are many ways that life is appropriated for capital. The relationship between the citizen (as worker and consumer), the state and multinational corporations has been fundamentally altered, breaching the traditions of capitalist divisions with serious implications for social justice.[7]

Several factors are responsible for these developments. First of all is the dislocation of the division between production and consumption. In what Alvin Toffler described as "prosumer capitalism," the line that separates production and consumption has been blurred.[8] Under such conditions, "capitalism, control and exploitation take on a different character than in the other forms of capitalism; there is a trend toward unpaid rather than paid labour and toward offering products at no cost, and the system is marked by a new abundance where scarcity once predominated."[9] A consumer culture has taken grip with the expansion of "consumption cathedrals" such as shopping malls and credit facilities.[10] The construction of malls and hypermarkets is on the increase in Africa, with adverse effects on small retail businesses.[11]

But the most explosive form of data colonialism has been created on the Internet and through the rise of social networking platforms. Web 2.0 has been crucial in the development of "means of prosumption."[12] Corporations such as Facebook, Google, MySpace, YouTube, Amazon, LinkedIn and so forth facilitate the implosion of production and consumption. Most importantly, prosumption

5. Nick Couldry and Ulises A. Mejias, "Data Colonialism," Note 1 at p. 337.

6. Ibid.

7. See Jean Baudrillard, *The Consumer Society: Myths and Structures* (London: Sage, 1998 [1970]).

8. Alvin Toffler, *The Third Wave* (New York: William Morrow, 1980) at p. 265.

9. George Ritzer and Nathan Jurgenson, "Production, Consumption, Prosumption: The Nature of Capitalism in the Age of the Digital 'Prosumer'," *Journal of Consumer Culture* 10(1) (2010): 13–36 at p. 14.

10. Ibid.

11. See Robert Ebo Hinson, Thomas Anning-Dorson and Adelaide Kastner, "Consumer Attitude towards Shopping Malls in Sub-Saharan Africa: An Exploration of the 'new' Retail Format in Ghana," *Africa Journal of Business and Economic Research* 2(3) (2012): 97-134.

12. George Ritzer and Nathan Jurgenson, "Production, Consumption, Prosumption," Note 9 at p. 19.

facilitates the generation of huge databases. Google alone collects data from upwards of 2 billion people.[13] The extent of the digital surge becomes clear when you consider that by 2019 there were 5.1 billion unique mobile users, 4.4 billion internet users, and 3.5 social media users.[14] Instead of contributing labour and money, citizens (or, more appropriately, netizens) are busy contributing data. Such online data constitutes a new form of surplus value for capitalism. All this makes it very complicated to organize against capitalism. As capitalism advanced, producers formed trade unions and consumers organized through consumer movements to challenge capitalist exploitation. Today, as a citizen prosumer, who do you negotiate with? With the atomization of work, for instance, who does an Uber passenger bargain with? How can you argue that you are being exploited when you seem to be enjoying all the hours that you spend online?

In his autobiography *Permanent Record*, National Security Administration (NSA) whistleblower Edward Snowden provides compelling accounts of how U.S. intelligence agencies keep a permanent record of the metadata derived from the records of anyone in the world with a digital footprint (e.g., smart phone, computer and the various Internet platforms).[15] Ostensibly done for national security, such "big data" produced by the digital revolution as a result of secret surveillance, introduces new meaning to Michel Foucault's concept of panopticon surveillance and control over entire populations.[16] Snowden elaborates:

> Meta data is data about data. It is, more accurately, data that is made by data—a cluster of tags and markers that allow data to be useful. The most direct way of thinking about metadata, however, is as 'activity data,' all the records of all the things you do on your devices and all the things your devices do on their own. Take a phone call, for example:

13. Ben Popper, "Google Announces over 2 Billion Monthly Active Devices on Android," *The Verge,* May 17, 2017, available at: https://www.theverge.com/2017/5/17/15654454/android-reaches-2-billion-monthly-active-users [accessed Dec 12, 2019].

14. See *Global Digital Report 2019*, We are Social (January 2019), https://wearesocial.com/global-digital-report-2019 [accessed Dec 12, 2019].

15. Edward Snowden, *Permanent Record* (London: Pan Macmillan, 2019). Also see David Lyon, *Surveillance after Snowden* (Cambridge, UK: Polity Press, 2015).

16. See Michel Foucault, *Discipline & Punish: The birth of the Prison* (New York: Pantheon Books, 1977).

> its metadata might include the date and time of the call, the call's duration, the number from which the call was made, the number being called, and their locations. … Metadata can tell your surveillant the address you slept at last night and what time you got up this morning. It reveals every place you visited during your day and how long you spent there. It shows who you were in touch with and who was in touch with you… In sum, metadata can tell your surveillant virtually everything they'd ever want or need to know about you, except what's actually going on inside your head.[17]

This type of datafication is significant for Africa primarily because of its fragile economies, poor infrastructure and inadequate justice institutions. It is inept to protect itself from data misuse and exploitation.

Power/gender relations also manifest in data practices, particularly regarding how data is generated, its travel analytics and the way it is interpreted. The creators, collectors and analyzers of data are overwhelmingly male, mainly located in the global North. These facts have serious implications for justice claims and accountability factors for Africans, particularly marginalized groups such as women, asylum seekers and sexual minorities. Indeed, the datafication of society further facilitates processes of Othering and marginalization in new and more efficient ways.[18] Big data represent new weapons in the hands of colonial institutions and multinational corporations.[19] The thousands of undocumented African migrants crossing European borders, for example, are turned into biometric databases, which are then used for what Annalisa Pelizza denounced as "alterity processing."[20] To be sure, big data has become an ideology and "datafication" has emerged as a new discipline that studies data mining practices by states and corporations.[21] Digital labour studies, for example, seek to expose

17. Edward Snowden, *Permanent Record*, Note 15 at p. 179-80.

18. Amartya Sen, *The Idea of Justice* (Cambridge: Harvard University Press, 2009).

19. See Stefania Milan and Emiliano Treré, "Big Data from the South(s)," Note 4.

20. Annalisa Pelizza, "Processing Alterity, Enacting Europe: Migrant Registration and Identification as Co-Construction of Individuals and Polities," *Science, Technology & Human Values*, Published electronically February 6, 2019, https://journals.sagepub.com/doi/pdf/10.1177/0162243919827927 [accessed December 10, 2019].

21. Stefania Milan and Emiliano Treré, "Big Data from the South(s)," Note 4. Also see

the coloniality of global digital platforms and the gender/racial differentials within the tech sector.[22] E-hailing taxis such as Uber, for example, are exploiting drivers who have to endure onerous working conditions for low pay.[23] Backed by corporate finance, Uber "leverages predatory subsidies, network effects, Big Data analytics, and the deregulatory effects of its position as an 'intermediary' to stamp out competition and colonise the market."[24]

Currently, the average mobile broadband penetration in Africa lies at 25 percent with Algeria on top with 88 percent and the Comoros with the least, at zero.[25] But the race is on to integrate Africa into the global digital ecosystem (software, hardware and network connectivity). In October 2019, a report by the Broadband Commission for Sustainable Development, entitled *Connecting Africa through Broadband*, was launched at the World Bank/IMF annual meeting in Washington, DC. It promises Africa transformative development through digitization.[26]

In order to close the connectivity gap and set up the requisite broadband infrastructure in Africa, the World Bank is mobilizing funds, primarily from multinationals and multilateral investors. This is in addition to independent efforts by giant tech corporations to expand their reach in Africa. Examples of the so-called philanthropic projects that are already in Africa, touted as a "basic human right" to connect all people, include Facebook's Free Basics,

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Safiya Umoja Noble, *Algorithms of Oppression: How Search Engines Reinforce Racism* (New York: New York University Press, 2018); Virginia Eubanks, *Automating Inequality: How High-tech Tools Profile, Police, and Punish the Poor* (New York: St. Martin's Press, 2018); José van Dijck, "Datafication, Dataism and Dataveillance: Big Data between Scientific Paradigm and Ideology," *Surveillance and Society* 12(3) (2014): 197–208; and Catherine D'Ignazio, and Lauren Klein, *Data Feminism*, (Cambridge, MA: MIT Press, 2019).

22. See Antonio Casilli, "Digital Labor Studies Go Global: Toward a Digital Decolonial Turn," *International Journal of Communication* 11 (2017): 3934–54.

23. Michael Kwet, "Digital Colonialism: US Empire and the New Imperialism in the Global South," *Race and Class* 60(4) (2019): 3-26.

24. Ibid. at pp. 6-7.

25. See Broadband Commission for Sustainable Development, *Connecting Africa through Broadband: A Strategy for Doubling Connectivity by 2021 and Reaching Universal Access by 2030* (October 2019) at p. 60. Broadband is defined as average download speeds of 256 Kbps or greater while the target download speeds by 2021 is 3 Mbps. Available at: https://www.broadbandcommission.org/Documents/working-groups/DigitalMoonshotforAfrica_Report.pdf [accessed December 10, 2019].

26. Ibid., at p. 16.

Terragraph and Aries; and Google's Csquared and Loon.[27] Loon balloons with solar-powered cellular network gear on board are already on trial, hovering in the stratosphere above Kenya from where they beam high speed internet to rural villages with no tower-based infrastructure.[28] Many other African countries have granted Google permissions to fly Loon balloons in their air space.[29] In 2015 South Africa launched Operation Phakisa in Education (OPE) to introduce "paperless classrooms" in public schools where free laptops, desktops and tablets were distributed to schools. Phakisa means "hurry up" in SeSotho, nomenclature that reflects the urgency and rush of the imperialist project. Michael Kwet has analyzed this new-fangled e-education and linked it to digital colonization: "On the surface, the project appears a step forward towards equity in a changing world. Who wouldn't want computers for poor Black students? Yet the project is slated to plant US tech products inside the classroom, and it intends to incorporate Big Data surveillance across the entire education system. No public debate has transpired."[30]

Companies like Facebook and Google are the 21st century's equivalents of the 19th- century chartered companies such as the Imperial British East Africa Company, the Royal Niger Company, or the German East Africa Company. All these worked to establish control of different parts of the continent on behalf of imperialist states. The key actors include corporations such as Google, Facebook, Amazon and Apple in the West, and in China, firms such as Baidu, Alibaba and Tencent.[31] This emergence of China is most dramatically represented by the conflict over Huawei.[32] In this

27. Danielle Coleman, "Digital Colonialism," Note 2 at p. 428.

28. See "Alphabet's Project Loon Undergoes first Commercial Trial in Kenya," *TechGig Bureau*, 3 July, 2019, available at: https://content.techgig.com/alphabets-project-loon-undergoes-first-commercial-trial-in-kenya/articleshow/70054828.cms [accessed Dec 11, 2019].

29. E.g., DR Congo, Botswana, Nigeria, South Africa, Mauritius, Seychelles and Congo Brazaville. In December 2019 Uganda backtracked on their permission citing "security concerns." See Chris Kiwawulo, "Security Blocks Internet Balloon Deal with Google," *Sunday Vision*, December 15, 2019 at p.6.

30. Michael Kwet, "Digital Colonialism," Note 23, at p. 4.

31. Nick Couldry and Ulises A. Mejias, "Data Colonialism," Note 1 at p. 340.

32. See Bloomberg News, "How Huawei Landed at the Center of Global Tech Tussle," December 17, 2019, available at: https://www.bloomberg.com/news/articles/

respect China is the "new kid" on the block, emphasizing the point that the dragnet of digital appropriation befalls all people regardless of race, class, gender, age, religion or geographical location. It makes all of us subjects of capital and of algorithmic management and governance. It also creates what Sylvia Wynter refers to as "new spaces of Otherness"[33] which must be exposed through decolonial analyses.

The 2018 data scandal involving Facebook and the British consulting firm Cambridge Analytica was quite revealing. Cambridge Analytica, "harvested" the personal data of 50 million Americans and approximately 1 million Britons from their Facebook profiles (without their permission) to construct psychological profiles and used it for political advertising in the 2016 US elections.[34] Such predictive analytics can be used to manipulate all aspects of our lives and invade our privacy in ways that we are not aware of. The ground is being prepared for the new, seemingly developmental, form of colonialism on the continent. "Digital colonialism" has been defined as "the decentralized extraction and control of data from citizens with or without their explicit consent through communication networks developed and owned by Western tech companies."[35] Once high speed connectivity has been universalized in Africa, the Internet of Things (IoT) will be unleashed, including mobile devices, computers, sensors, voice-activated devices, geospatial instruments, machine-to-machine communications, and vehicle-to-vehicle communications.[36] With that infrastructure in place and the data repositories (e.g., clouds

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2019-12-17/how-huawei-landed-at-the-center-of-global-tech-tussle-quicktake[accessed Dec 21, 2019]

33. Sylvia Wynter, "Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards the Human, After Man, Its Overrepresentation—An Argument," *CR: The New Centennial Review* 3(3) (2003): 257-337.

34. See Danielle Coleman, "Digital Colonialism," Note 2 at p. 435. Also see Renata Ávila Pinto, "Digital Sovereignty or Digital Colonialism?" *Sur: International Journal on Human Rights* 15 N. 27 (2018): 15-27.

35. See Danielle Coleman, "Digital Colonialism," Note 2 at p. 423; and Silas L. Marker, Mads Verstergaard and Vincent F. Hendricks, "Digital Colonialism on the African Continent," *Business Report*, October 16, 2018, available at: https://www.iol.co.za/business-report/opinion/opinion-digital-colonialism-on-the-african-continent-17493010 [accessed Dec 11, 2019].

36. Cesar Calderon, Gerard Kambou, Vijdan Korman, Megumi Kubota and Catalina Cantu Canales, *Africa's Pulse: An Analysis of Issues Shaping Africa's Economic Future*, Vol. 19 (Washington: The World Bank Group, 2019). at p. 88.

and data centres) set up, the crucial foundation for the "capitalization of life without limit" will be completed.

By 2030, the plan is that colonialism will have the capacity to "*continuously* and *autonomously* collect and transmit data [about Africans] within privately controlled systems of uncertain security."[37] And this move has the full support of the African Union.[38] Digitization has become the new "civilizing" mission and the latest framework for rationalizing the new mode of colonization. Developing the broadband infrastructure is equivalent to the construction of imperial railways in the nineteenth century in order to facilitate the colonization of Africa. Is the continent in a position to resist the "darkest" side of digitization and datafication? How can the lives of its 1.2 billion people avoid being appropriated and turned into a mega digital laboratory? To fully grasp the intricate workings of digital colonialism Africa must heed Aníbal Quijano's counsel and challenge its fundamental legitimacy through decolonial thinking.[39] In particular, its underlying rationalization that ties continuous appropriation to the sustainable development goals must be epistemologically uncovered.

Apart from the treasure trove of 1.2 billion people located in Africa as potential data, there is even a more direct link between new technology and the African continent. The boom of ICT at the end of the twentieth century increased the demand for certain minerals that are vital as building blocks for the production of electronic devices such as cellular phones, pagers, personal computers and automative electronics. In particular, the demand for Coltan has skyrocketed.[40] Four-fifths of the world's tantalum

37. See Nick Couldry and Ulises A. Mejias, "Data Colonialism," Note 1 at p. 344. Emphasis in original.

38. The Commissioner of the African Union Commission (AUC), Dr. Amani Abou-Zeid, is also the Commissioner for the Broadband Commission for Sustainable Development and is responsible for preparing the Digital Transformation Strategy for the continent. See Broadband Commission for Sustainable Development, *Connecting Africa through Broadband*, Note 25 at p. 26.

39. See Aníbal Quijano, "Coloniality and Modernity/Rationality," in Walter Mignolo and Arturo Escobar, *Globalization and the Decolonial Option*, pp. 22-32 (London: Routledge, 2013).

40. Financial Buzz, "Coltan Demand as Tantalum Applications Expand," FinancialBuzz.Com (July 24, 2018), available at: https://www.prnewswire.com/news-

(which, when combined with columbium, makes Coltan) is found in Africa, of which 80 percent lie in the eastern Democratic Republic of Congo (DRC).[41] However, it is the warlords, not the *wananchi* in that country, who benefit from the proceeds of this "miracle" mineral. Dena Montague argues that "international competition for scarce resources in general and for Coltan in particular, is a key factor in the lack of state stability and the continuation of war in the DRC.[42]

Hence, resource-rich Africa is a key target for digital colonialism and the new scramble for its land resources is already underway. How can we resist the latest disruption of our socioeconomic and political landscape? Understanding and resisting digital colonialism is crucial for the decolonization project.[43] The best visionaries are non-academics. They need to be brought on board for envisioning alternatives to the algorithmic order and totality. Africa sits at the tip of the geopolitical margins, which means that its worldview is like no other; marginalized groups within Africa such as women have an even more unique worldview. Therefore, in building alliances with anguished netizens from around the world, African women should provide useful insights about the affected landscape. How can we form and shape Afro-feminist alternatives to the Amazons and Facebooks of this era? How can data collection be utilized in more positive ways that enhance social justice and transformation? Michael Kwet suggests that Africa invests in publicly-owned and controlled technology as part of the Free Software Movement (FSM).[44] The primary aim of FSM is to develop technology that gives control to individuals and communities, designed to subvert cloud centralization and counter big tech.[45] Linda Dencik *et al.* suggest that we use the lens of "data justice" to critique and "expose systemic injustices in an age of datafication."[46]

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releases/coltan-demand-grows-as-tantalum-applications-expand-899683676.html [accessed December 24, 2019].

41. Larry Cunningham, "Columbium (Niobium) and Tantalum," *USGS Minerals Yearbook*, 1999.

42. Dena Montague, "Stolen Goods: Coltan and Conflict in the Democratic Republic of Congo," *SAIS Review* 22(1) (2002): 103-118, at p. 104.

43. Nick Couldry and Ulises A. Mejias, "Data Colonialism," Note 1 at p. 346.

44. Michael Kwet, "Digital Colonialism," Note 23.

45. Ibid. at pp. 17-19.

46. Lina Dencik, Fieke Jansen and Philippa Metcalfe, "Data Justice: A conceptual

Finally, the gender digital divide on the continent is of paramount importance. Women constitute the majority of the 4 billion people globally that are not part of the digital economy and Africa has the most significant androcentric skew when it comes to internet access.[47] "Access" means not just physical access to a computer or network but also possessing basic computer literacy skills and the time to meaningfully utilize Information and Communication Technology. The face of poverty in Africa is female, a fact closely linked to the *under*-education of African women. Add the reality that they carry a disproportionate burden of unpaid domestic and caring work, it becomes clear why women are largely excluded from the digital realm. While African women's minimum digital footprint online may be viewed as a good thing as they are less likely to be affected by digital coloniality, the downside is their exclusion from the positive aspects of ICT. Women need to critically challenge the disempowering elements of technology.

framework for approaching social justice in an age of datafication," Working Paper, Cardiff University (2018) at p.6. Available at: https://datajusticeproject.net/wp-content/uploads/sites/30/2018/11/wp-conceptual-framework-datajustice.pdf [accessed December 31, 2019].

47. Global Digital Report 2019, "We are Social," Note 14. Also see Vidisha Mishra, "Gendering the G20: Empowering Women in the Digital Age," *ORF Issue Brief*, Issue No. 186 (June 2017), available at https://www.orfonline.org/wp-content/uploads/2017/06/ORF_IssueBrief_186_G20Women.pdf [accessed Dec 2, 2019].

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